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ABSTRACT

This report assesses the extent to which the policies and enforcement practices of the U.S. Department of Education have fulfilled the promise of the recent reauthorization of the Title I program. The study is organized around five broad sets of questions about the impact of Title I on the academic achievement of poor children, centering on: (1) high standards for all; (2) fair and accurate assessments; (3) accountability; (4) teacher capacity to provide all students with the opportunity to achieve; and (5) evidence that reforms can work. The report finds that Title I has made some difference to poor and minority children, but it has not made enough of a difference to close the persistent achievement gap between poor and nonpoor, minority and nonminority students. There is every reason to believe, however, that the program can be successful in the future. The new Title I reforms, while still in midstream, are sound and workable. Evidence of their positive impact is accumulating in states like Maryland and Texas that had similar standards-based reforms in effect before the reauthorization. The Citizens Commission recommends that Congress ratify the principles of standards-based reform in the 1994 amendments by reauthorizing Title I for at least 5 more years. Congress should also take additional steps to improve the capacity of schools and school districts to help all students reach high standards. An appendix contains selected provisions of the Elementary and Secondary Education Act. (Contains 41 figures.) (SLD)

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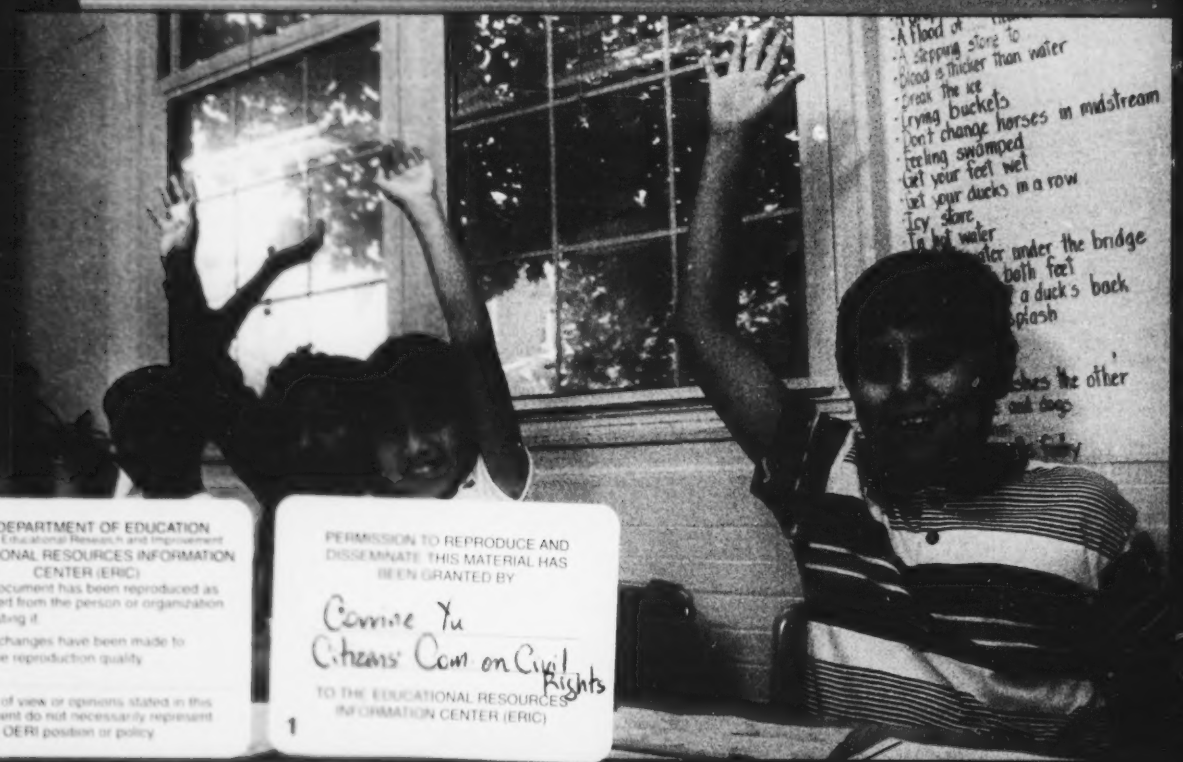

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Report of the Citizens' Commission on Civil Rights
Summer 1999

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Title I in Midstream:

The Fight to Improve Schools for Poor Kids

Dianne M. Piché, Project Director
with the assistance of
Phyllis P. McClure
Stephanie T. Schmelz

Corrine M. Yu and William L. Taylor, Editors

Report of the Citizens' Commission on Civil Rights
Summer 1999

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Corrine M. Yu, Director and Counsel of the Commission during the preparation of this report, produced and edited this report. William L. Taylor, Vice Chair of the Commission, helped write and edit the report and provided overall guidance for the project. Brian Borrayo and Lauren Altes provided valuable administrative support to the Commission and to the authors and editors during the preparation of this report.

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Foreword

The Citizens' Commission on Civil Rights is a bipartisan organization established in 1982 to monitor the civil rights policies and practices of the federal government and to seek ways to accelerate progress in the area of civil rights.

This report is one component of the Citizens' Commission on Civil Rights' Title I monitoring project, which is examining whether and how recently enacted federal education reforms put into place through the reauthorization of Title I of the Elementary and Secondary Education Act of 1965 are being implemented in high-poverty schools. Portions of this report were previously released in September 1998.

The Commission gratefully acknowledges the support of the Spencer Foundation, the Edna McConnell Clark Foundation, the John D. and Catherine T. MacArthur Foundation, and the Annenberg Foundation for this study.

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Summary

Introduction, Findings and Recommendations

Nearly a half-century after the Supreme Court's landmark decision in *Brown v. Board of Education*, our nation still has not secured for our least-advantaged children the educational opportunities that *Brown* held were necessary to redress discrimination. While significant numbers of our children have benefitted from desegregation, from the enforcement of other civil rights laws in education, from federal assistance to disadvantaged children, and from federal programs such as Head Start, the barriers to obtaining a good education faced by the minority poor remain imposing. Those barriers are greatest for children who live in concentrated poverty.

There is much evidence that all children can learn and that the public schools serving minority and poor children can be successful in educating students to high standards. What is missing is a major commitment on the part of educators and public officials at all levels—federal, state, and local—to make educational opportunity for poor children a priority, to provide sufficient resources and deploy them effectively, to insist on high academic standards, and to hold all schools and school districts accountable for results. Through the passage of the Title I program, funded under the Elementary and Secondary Education Act (ESEA), Congress provided a powerful tool for accomplishing all of these goals. In 1994, the most recent reauthorization of the three-decade-old law, Congress substantially overhauled the Title I program to shift the focus from remedial education to high standards and higher achievement.

In this report, part of a larger study that will include an examination of Title I implementation in selected states, districts, and schools, we assess the extent to which the policies and enforcement practices of the U.S. Department of Education ("Department") have fulfilled—or in some cases, thwarted—the promise of the new law with respect to our poorest children. Our study is organized around five broad sets of questions germane to whether the 1994 Title I reforms are having their intended impact on improving the achievement of disadvantaged children:

- Are high **standards** being set for all children?
- Is the attainment of these standards being measured with **assessments** of student achievement that are fair, accurate, and shared with parents and the public?
- Are school districts and schools that receive Title I dollars held **accountable** for making substantial and continuous improvements in student performance?
- Do states, districts, and schools ensure that teachers have the **capacity** (i.e., the knowledge, training, and resources) they need to provide all students with the opportunity to achieve at high levels?
- Is there evidence that the **reforms can work**, i.e., examples of successful schools, districts, and states making progress toward achieving higher standards?

With respect to the central question—whether Title I is making a difference for poor and minority children—the Citizens' Commission's short answer is that ***yes***, Title I has made some difference to poor and minority children, but ***no***, Title I has not made enough of a difference to close the persistent

achievement gaps between poor and non-poor, and minority and non-minority students. The shortcomings of the program flow in large measure from the failure of federal, state, and local officials to heed the call of the new law to renovate and reform the educational system.

Nonetheless, there is every reason to believe that the program can be successful in the future. The new Title I reforms, while still in midstream, are sound and workable. Evidence of their positive impact is accumulating in states, like Maryland and Texas, that had similar standards-based reforms in place before 1994, and in areas that have acted rapidly to implement the 1994 reforms. Prospects for further gains will be enhanced by modest improvements in the statute, and a commitment by the Clinton Administration to implement the law, along with a willingness to enforce its requirements where violations occur.

Accordingly, the Citizens' Commission recommends that Congress ratify the principles of standards-based reform contained in the 1994 amendments by reauthorizing Title I for at least five more years. Congress should also take additional steps to improve the capacity of schools and school districts in areas of concentrated poverty to meet the challenge of helping all their students reach high standards.

The Citizens' Commission also recommends that the President and the Secretary of Education announce the resolve of the Administration to implement and enforce Title I to secure its primary purpose: equalizing the learning opportunities available to poor and non-poor children. In addition, governors and state and local education officials should heed the mandate of Title I and, in many cases, their own state laws and policies, to ensure that poor and minority children reap the benefits of standards-based reform.

Chapter II. Federal Aid to Education: The Continuing Need and the Varying Response

Although public education is largely a state and local concern, the Fourteenth Amendment calls upon the federal government to ensure equality of educational opportunity. Guided by the Supreme Court's 1954 decision in *Brown v. Board of Education*, the national interest in education has been manifested for the past three decades primarily through the civil rights laws and through Title I, an $8 billion program that now serves approximately 10.5 million students in some 50,000 schools. While the federal share of educational expenditures is small (less than 7%), Title I has helped to narrow the gap in education revenue that exists between high- and low-income areas because of inequities in state school financing systems. There is also evidence that the program has been effective in teaching basic skills and in ameliorating, to a degree, the persistent achievement gaps between white and minority students.

Nevertheless, evidence drawn from schools operating under the old law (then called Chapter 1) showed that the law was not fully effective because: (1) it was designed to teach only basic, not advanced, skills; (2) it was based on and ratified low expectations of poor and minority youngsters; and (3) it isolated these youngsters from the mainstream by pulling them out of the classroom for remediation. In 1988, a new quality focus was added to the program. In 1994, Congress completely overhauled the law in the Improving America's Schools Act (IASA), reauthorizing Chapter 1 (now Title I) for a five-year period. The IASA contained many of the major changes recommended by education and civil rights advocates to ensure that Title I and other federal funds would be used by state and local education agencies to undertake meaningful reforms that would result in substantial academic gains for poor and minority students.

Taken together, the 1994 amendments amount to a major agenda for education reform that can benefit poor and minority children. Title I now requires that states and school districts receiving funds:

- Set **high standards** that all students, including low-income and limited English proficient students, must meet in all subjects.
- Develop **new assessments** that measure the progress of students, schools, and school districts in meeting high standards.
- Hold school districts and individual schools **accountable** for showing continuous improvements in student performance, until all students achieve at high levels.
- **Target resources** to schools and districts with the highest concentrations of children from low-income families.
- Encourage **schoolwide improvements** in schools where more than half the children are from low-income families.
- Ensure that eligible schools and districts have the **capacity** to teach to high standards, including adequate **professional development**, and, where necessary, the provision of extra resources to needy schools.

Chapter III. Standards

Responding to pervasive evidence of low standards and expectations, Congress rewrote Title I to require an entirely new approach. To receive Title I funds, states are now required by law to demonstrate to the Department that they have adopted challenging content and performance standards.

But the new law's commitment to high standards for all children soon hit a roadblock in implementation. The Clinton Administration almost immediately after the 1994 mid-term elections began to exhibit reluctance to tell state and local authorities what was expected of them under the new law, or to implement key provisions of the law that were designed to equalize learning opportunities for poor and non-poor children. In the end, delays in implementation, faulty interpretations, and breaches in enforcement of the law became the order of the day.

The new law's intent was to transform Title I from a remedial reading and math program into one that assisted schools serving poor children to improve the achievement of students in a broad range of challenging academic content. In proposed and final regulations, however, the Department limited the requirement of standards and assessments for Title I purposes to two subjects—reading and mathematics—even when states had standards and assessments in other subjects. This narrow view threatens to undermine efforts to bring high standards, and aligned curriculum and instruction in subjects like science and social studies, to high-poverty schools.

In another break with the letter and spirit of the new law, which requires states to adopt uniform standards, the Department decided to permit states to accept differing local standards, without any effective means for ensuring that all children would be called upon to meet high standards. The enduring message of the Department's nonregulatory policy guidance on this subject is that states are free to adopt dual standards, thereby allowing districts with high proportions of poor and underachieving students to expect less of their students.

Chapter IV. Assessments

The new assessments called for by Title I are far different from what has previously been used to measure student learning. For one thing, the assessments will measure what a student knows against a standard that specifies what he or she is expected to know, rather than comparing one student against another on a bell-shaped curve. For another, the standards will themselves often call for students to demonstrate knowledge and skills needed to live and work in a much more complex society. Thus, the forms of these new assessments are expected to be rich and varied, relying less on multiple-choice, "fill-in-the-bubble" items, and instead incorporating stu-

dent writing, constructed responses, portfolios, and other measures of students' ability to solve problems and demonstrate understanding of complex subject matter. Finally, in a significant break from past practice, assessments should include important core subjects beyond reading and mathematics, such as social studies and science.

These new forms of assessment are an essential element of the new law's theme of standards-based reform. Without an accurate means of measuring what students know and can do, responsible school authorities have no way of gauging whether students are reaching high standards. And without such an accurate gauge, schools and school districts cannot be held accountable for results. Accurate assessment tools, then, are the glue that holds the reform effort together.

The Citizens' Commission's investigation uncovered critical deficiencies in the Department's interpretation of the assessment requirements of the new law. The end result was the approval of many state plans that were legally inadequate. For example, the Department did not require states to spell out their plans for full inclusion of limited English proficient (LEP) and disabled students in the assessments, including their plans for appropriate modifications and accommodations. Nor did the Department require states to describe how they would provide for the disaggregation of assessment results by race, gender, poverty status, English proficiency status, and other categories spelled out in the law. Moreover, the Department did not provide sufficient direction to its peer reviewers and staff members charged with reviewing and recommending approval or disapproval of these plans. As a result of all of these failures, along with a general reluctance to engage in controversy with states, many plans were approved without the Department even pointing out, much less requiring correction of, their legal deficiencies.

The Department also departed from the law's intent when it decided not to require statewide assessments in the Title I program. Civil rights and other advocates criticized this decision on grounds that allowing local school districts the latitude to use their own tests was likely to perpetuate a dual education system, in which lower standards would persist in high-poverty, high-minority school districts—the very outcome the new law sought to avoid. Experts in the field of assessment and measurement, including the National Research Council's Board on Testing and Assessment, agreed that aligning or assuring the comparability of different assessments was virtually impossible, as a technical matter. The Citizens' Commission's examination of the state plans submitted to the Department confirmed the seriousness of the Department's retreat on this issue, in that many of the state plans approved by the Department do not appear to comply with the law.

Chapter V. Accountability

Under the new Title I, states must develop and implement comprehensive systems of accountability for all Title I schools. These accountability systems must be based on state standards, and assessments aligned with those standards. While the law allows each state to design its own final accountability system, aligned with its own state standards, assessments, and reform efforts, the following key elements must be included to ensure a viable accountability system and meaningful school improvements: (1) adequate yearly progress (AYP); (2) public engagement; (3) identification and help for schools in need of improvement; (4) corrective action; and (5) requirements for state plans.

To its credit, the Department made accountability a priority in considering proposed state plans. Failure to describe sufficient measures to identify schools and districts for improvement during the transition period was the number one reason many states received only conditional approval of the Title I component of their plans. In addition, the Department has worked closely with state education officials and technical experts to craft sound accountability measures and has issued helpful guidance spelling out the requirements of the law.

Regrettably, however, much of the Department's enforcement to date of Title I's accountability requirements has glossed over the widespread propensity of

school officials to maintain and tolerate a permanent underclass of low-achieving students who are disproportionately poor and minority. For example, numerous states planned to use a single cut score on their assessment to determine adequate progress instead of requiring continuous improvement, thereby permitting schools to continue to fail to adequately educate the many Title I children who score below the cut-off. Many state plans also contained few or no provisions and safeguards to ensure that LEP and poor children also make adequate progress toward achieving the standards. Despite statutory language, neither early drafts of the Department's guidance nor its plan approval criteria required states to specifically include poor and LEP students in their definitions of AYP. In some cases abetted by guidance issued in conflict with the law, and in other cases in spite of its own helpful guidance, the Department has approved scores of accountability provisions in state plans that do not conform with the new law. In large measure, these deficiencies will permit, and in some cases exacerbate, dual standards within states, within districts, and even within individual schools, for advantaged and disadvantaged students.

The Department's vacillation and prolonged delay in issuing final guidance consistent with the law sent the wrong message to states, and undermined the statutory goal of statewide accountability measures to increase all students' achievement. The final guidance was a small improvement over earlier drafts, in that it encouraged, but did not require, states to hold districts accountable for the progress of poor and LEP students, not just for overall progress. To the detriment of LEP children, the guidance provided too little, too late; it failed to *require* full inclusion in the accountability system, and it was added long after state plans were submitted and approved.

Chapter VI. Capacity-Building

The new Title I law contains three sets of provisions which, if carried out, should bring about real improvements in the quality of education provided in many participating schools. These are: an explicit state duty to help build school capacity; provisions for professional development; and state support for schoolwide programs and schools in need of improvement.

While all Title I grant recipients have a legal responsibility to build school capacity, the Department has chosen to minimize this capacity-building requirement by providing little or no explanation of this responsibility. Moreover, the Department chose not to make compliance with the capacity-building provision a condition for approval of states' plans (and, hence, the continued flow of Title I dollars to the states) although it could have, and should have, done so. Despite explicit statutory language, and despite commenters' recommendations on proposed plan criteria, the Department never asked, nor was it told, whether states had any real intention of taking the steps needed to ensure that their Title I schools were able to implement the rigorous requirements of the new law with respect to what actually goes on in the classrooms of Title I schools.

With respect to professional development, the Department has been a strong proponent, but has never advised states that it will enforce relevant Title I provisions, or required the states to enforce these provisions. For example, Title I now requires schools identified as needing improvement to devote the equivalent of 10% of their Title I allocation over a two-year period to professional development activities. But most states glossed over this requirement in plans approved by the Department..

The most encouraging sign with respect to the capacity provisions in Title I is that most states have been willing to heed the call of the new law to help improve schools in a more systematic way by establishing state-organized and financed school support teams and related programs operating out of the state education departments. The Department's clearest guidance both to the field and to its own peer reviewers on capacity issues was on the topic of state support teams. The result was that many states' plans clearly described the creation, composition, and role of school support teams.

States have been undercut in their capacity-building efforts, however, by the refusal of Congress

to appropriate funds for school improvement in 1997-98 and for targeted grants for the neediest districts.

Despite deficiencies, a number of states did articulate a strategy for sustained help and capacity-building for their most troubled schools and for the provision of the sort of intensive, hands-on professional development most experts believe is needed to turn around such schools.

Chapter VII. Waivers

As part of Title I's exchange of greater flexibility for increased accountability, Congress included "waiver" provisions in the recent amendments to the ESEA. Now, for the first time in more than 30 years of federal education law, grant recipients may be relieved of the duty to comply with ESEA provisions that are deemed to impede improvement and reform.

The Citizens' Commission analyzed publicly available data and reports as of December 31, 1997, the midpoint of the authorization period, in order to determine whether the waiver provisions, and the Department's implementation of them, have supported or undermined the core objective of the law: to improve educational outcomes for children in schools with high concentrations of poverty. The Department generally made reasonable case-by-case waiver determinations, and required applicants to demonstrate that the needs of higher poverty schools would be adequately addressed. Thus, in the Citizens' Commission's judgment, these waivers did not seriously undermine the statute's intent to target aid to poor children.

The relative paucity of waiver applications—fewer than 500 over a three-year period from out of the 13,000 Title I school districts within the United States—and the small number of provisions for which waivers were requested suggest that the law is workable as written. However, there is still the very real possibility that the low number of waiver requests reflects, in part, the fact that many school officials either do not fully comprehend their obligations under Title I, or do not take them seriously.

Chapter VIII. Good News

After operating for three years under Title I, and assisted by initiatives catalyzed by Goals 2000, the New American Schools program, and state reform efforts, the number of school success stories is steadily increasing. Numerous school improvement programs have begun to "scale up," bringing reform to hundreds rather than just a handful of schools. Entire districts are beginning to implement reforms based on research about effective schooling for disadvantaged students. Significantly, there is now evidence that these heightened reform efforts are improving achievement districtwide, rather than just for individual isolated schools. These success stories shift the focus of the debate from what is wrong with kids (or their parents) to what schools can do to level the playing field and provide opportunities to learn.

The Citizens' Commission examined the results of standards-based reform in three cities—San Antonio, Texas; Philadelphia, Pennsylvania; and Memphis, Tennessee—where schools serving largely poor and minority populations are improving steadily as a result of aggressive, districtwide reforms. With strong community support, and even stronger leadership, these districts have overcome numerous barriers to student achievement.

These success stories are still the exception, but they need not be. Their reforms and results can be replicated when a community, spurred by sufficient political will, strong leadership from school and government officials, teacher support, and financing, commits itself to change. Title I, by providing critical funding and key reform concepts, can be a lever for educational reform that makes a difference in students' lives.

Conclusion

While debate continues about the general health of American public education, almost all knowledgeable people agree that schooling for poor children is in a crisis state. Many disadvantaged youngsters are

performing poorly in school and are emerging without the knowledge and skills that would enable them to be productive and participating citizens in American society.

The fault for these conditions lies not in our children, but in our schools, in our society, and in ourselves. If any doubt existed on this score, it should have been extinguished by the great academic progress that many black and Latino students who once were shackled by segregation and other forms of discrimination achieved once these restraints were lifted. The strides made by these youngsters in the wake of the civil rights revolution send a clear message that children who are given the opportunity to succeed will make good use of it.

This study is a good news/bad news report. The good news is that the Clinton Administration has been steadfast in its commitment to support for public schools and to targeting Title I resources to schools with the greatest needs. It has also advocated increased funding of Title I and other key programs to meet the educational needs of poor children. Moreover, several states and a number of urban districts have engaged in major reform and are able to report significant progress for poor children.

The bad news is that the Clinton Administration, once a prime advocate of standards-based reform, has since had a massive failure of will and nerve. That failure has been manifested by a refusal to insist that states comply with fundamental provisions of the law, notably the requirement that a single set of high standards be established for all the children in a state. In the Administration's readiness to countenance differing standards and expectations for children—one set for children in more affluent suburbs and another for poor children in inner cities—there are disturbing echoes of the old racially dual systems of education that the Supreme Court addressed in *Brown v. Board of Education* and of the two-tiered system of advanced versus basic education that the 1994 Title I reforms were designed to eliminate.

It would be unwise to overestimate the likely impact of standards-based reform on public education. The history of public education is littered with reforms offered as panaceas that failed to achieve their promise. But there are also strong reasons not to abandon in midstream an initiative that gives evidence of succeeding. No alternative to Title I reform has surfaced that holds out more hope of revitalizing the public schools that continue to serve the largest numbers of American children. No other set of proposals is truer to the unique American vision of common schools where all children are offered the means to achieve to their full potential.

Chapter I

Introduction

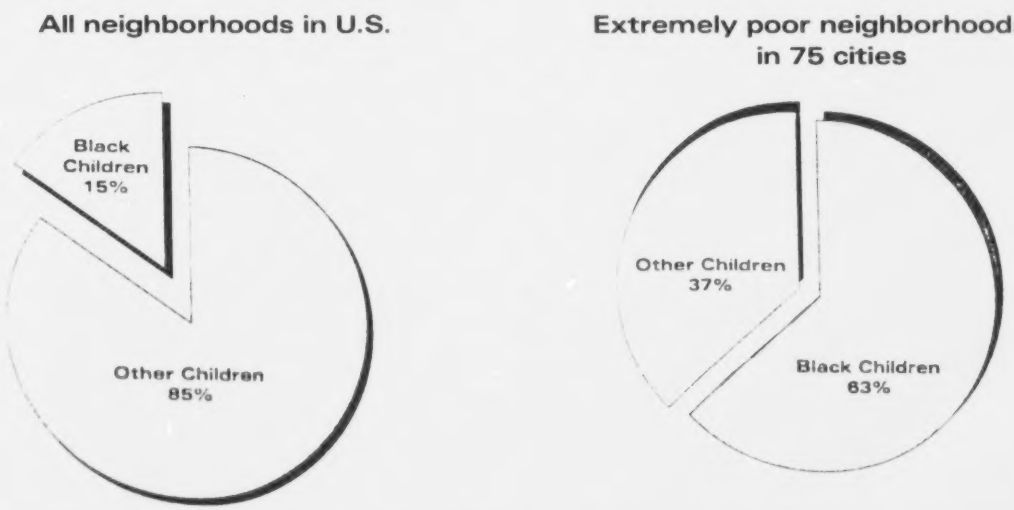
In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity . . . is a right which must be made available to all on equal terms.[1]

Nearly a half-century after the Supreme Court's landmark decision in *Brown v. Board of Education*, our nation still has not secured for our least-advantaged children the educational opportunities that *Brown* held were necessary to redress discrimination. While significant numbers of children have benefitted from desegregation, from the enforcement of other civil rights laws in education, from federal assistance to disadvantaged children, and from federal programs such as Head Start, the barriers to obtaining a good education faced by the minority poor remain imposing. Large and disproportionate numbers of African American, Latino, and other minority children now attend schools that are beset by intense poverty, low expectations, and low achievement.[2]

Black children are far more likely than others to live in concentrated poverty. (See Figure 1.) The last census showed that more than one in three Latino children—2.6 million—were living in poverty.[3] In 1995, according to the Census Bureau, 19.5% of Asian and Pacific Islanders under the age of 18 were below the poverty level.[4]

More generally, "minority children—who constitute 22 to 30 percent of students nationally in the

Figure 1. Children Living in Concentrated Poverty



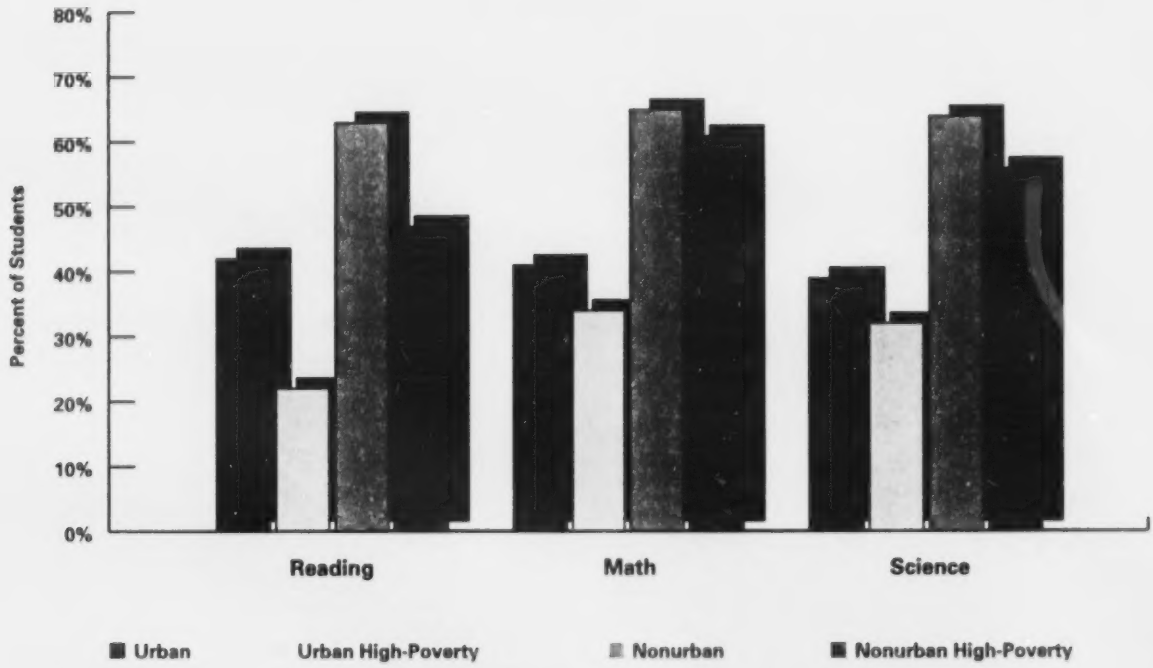
Source: Education Week, *Quality Counts '98: The Urban Challenge: Public Education in the 50 States*, at 15 (Jan. 8, 1998). Reprinted with the permission of Education Week.

first-, third-, and seventh-grade cohorts—account for 75 to 88 percent of students in high-poverty schools."[5] High-poverty schools, regrettably, are the rule and not the exception in many of our inner cities, Indian reservations, and rural communities.[6] Such high-poverty schools face an array of special challenges. Studies show a strong correlation between poverty and poor achievement: "[s]chool poverty depresses the scores of all students in schools where at least half of the students are eligible for subsidized lunch, and seriously depresses the scores when more than 75 percent of students live in low-income households."[7] (See Figure 2.)

The Citizens' Commission on Civil Rights believes that the persistence of unequal educational opportunity should be troubling to all Americans. There is much evidence that all children can learn and that the public schools serving minority and poor children can be successful in educating students to high standards. What is missing is a major commitment on the part of educators and public officials at all levels—federal, state, and local—to make educational opportunity for poor children a priority, to provide sufficient resources and deploy them effectively, to insist on high academic standards, and to hold all schools and school districts accountable for results.

Through the passage of the Title I program, funded under the Elementary and Secondary Education Act (ESEA),[8] Congress provided a powerful tool for accomplishing all of these goals and, in the process, for dramatically improving educational outcomes for the nation's most disadvantaged young people. A cornerstone of President Johnson's "Great Society" efforts to improve conditions for economically disad-

Figure 2. Students Scoring at "Basic" Level or Higher on NAEP



Source: Education Week, *Quality Counts '98: The Urban Challenge: Public Education in the 50 States*, at 12 (Jan. 8, 1998). Reprinted with the permission of Education Week.

vantaged Americans, its purpose was to provide for the special educational needs of children from low-income families.[9] The Title I program (which was renamed Chapter 1 between 1981 and 1994) is the federal government's largest program providing financial assistance to the nation's elementary and secondary schools.[10] In 1994, the most recent reauthorization of the three-decade-old law, Congress substantially overhauled the Title I program to shift the focus from remedial education to high standards and higher achievement—reforms that had been advocated by professional educators and a broad coalition of civil rights and education organizations, and endorsed by the Clinton Administration. These reforms called for raising academic standards; building the capacity of schools; adopting testing and assessments that fairly and accurately measure what children know; ensuring accountability by school officials; and ensuring the inclusion of all children, especially those with limited English proficiency and disabilities.

However, the new law, while potent, is not self-executing. Whether disadvantaged children will reap its benefits depends largely on the extent to which officials at every level carry out their respective obligations. Nor is the new Title I program expected to meet its goals in isolation. Rather, it must be integrated into state, district, and school efforts to improve learning for all students.

Yet while the success of reform efforts clearly depends on what happens in states, local districts, and individual schools, the ground rules under which these entities act are crucial. The wellspring of equality of opportunity in education has always been the national government, responding to the unmet needs of minorities and other disadvantaged children through the Fourteenth Amendment, the modern civil rights statutes, and aid to education laws. If the federal government abdicates responsibility for eliminating discrimination or assuring equality of educational opportunity, it is unlikely that other levels of government will assume that role. And if the federal government subsidizes or accedes to a splintering of public education, much damage will be done to our historic aspiration for national unity and a sense of common purpose.

Because the Citizens' Commission believes there is a continuing, compelling federal interest in promoting educational opportunity for children from low-income families, we view the education policy decisions to be made over the next few years at the national level as critical. Much rides on the effectiveness of Title I, the largest federal program, in stimulating and contributing to efforts to reform public education. While it is certainly possible for schools to improve without Title I, we believe there will be little hope for many high-poverty schools without the strong intervention, support, and accountability measures contemplated in this important federal law. Thus, it is imperative that Title I be held up to exacting scrutiny by those, including the Citizens' Commission, who would advance the interests of those who have often been left behind by our current educational system.

The Citizens' Commission has launched this study to assess the progress made by the federal government, the states, and four targeted communities in complying with the 1994 amendments to Title I contained in the Improving America's Schools Act.[11] We will investigate and report to the public on whether education officials charged with carrying out the new law have effectively implemented and enforced key provisions designed to improve educational opportunity for minority and poor children.

In this, the first of several reports on this issue, the Citizens' Commission focuses on the role of the federal government in setting the stage for Title I reforms in the states and school districts receiving funds. We examine the extent to which the policies and enforcement practices of the U.S. Department of Education have fulfilled—or, in some cases, thwarted—the promise of the new law with respect to our poorest children. Although the reforms in the law are still relatively new, the report also includes illustrative examples of states' and districts' progress in implementing its key provisions. We have taken care throughout to report real-life examples from state plans approved by the Department, as well as examples drawn from independent research, to illustrate cases both where implementation has been exemplary and where it has fallen short of what the new Title I requires.[12]

Subsequent Citizens' Commission reports will update these findings, as well as highlight the Citizens' Commission's field research in selected high-poverty communities in four geographically diverse parts of the country.

The Citizens' Commission's investigative and monitoring activities—both in this report on progress at the federal level and in our continuing work on state and local implementation—are organized around five broad sets of questions that are particularly germane to the ultimate question of whether the 1994 Title I reforms are having their intended impact on improving the achievement of disadvantaged children:

- Are high **standards** being set for all children?
- Is attainment of these standards being measured with **assessments** of student achievement that are fair, accurate, and shared with parents and the public?
- Are school districts and schools that receive Title I dollars held **accountable** for making substantial and continuous improvements in student performance?
- Do states, districts, and schools ensure that teachers have the **capacity** (i.e., the knowledge, training, and resources) they need to provide all students with the opportunity to achieve at high levels?
- Is there evidence that the **reforms can work**, i.e., examples of successful schools, districts, and states making progress toward achieving high standards?

Whether Title I is making a difference for poor and minority children is, of course, the central question. As the reader will see, the Citizens' Commission's short answer is a *qualified yes*. Yes, Title I has made a difference to poor and minority kids, but *no*, Title I has not made enough of a difference in closing the persistent achievement gaps between poor and non-poor and minority and non-minority students. The strengths of the program can be traced to strongly articulated federal policy, coupled with the perseverance of dedicated educators in schools and communities across the country. The shortcomings—many of which are chronicled in this report—flow in large measure from the failure of federal, state, and local officials to heed the call of the new law to renovate and reform. Instead, their actions continue to foster unequal educational opportunity and ignore a growing body of research evidence on the ability of all children to achieve at high levels and on the measures needed to assure high achievement. In too many places, the implementation of Title I is simply a continuation of the old Chapter 1 program, with all of its weaknesses.

Now, as the date approaches when Congress must decide whether to reauthorize Title I, the stakes have risen.

There are new calls in Congress to convert Title I into a "block grant" to states, a step that would carry the deregulation process begun in the 1994 amendments even further so that states and school districts would not be held accountable for securing academic progress with the use of federal funds. These proposals proceed from a diagnosis that lack of progress is due largely to federal interference and that the interests of children would be better served if the national government simply permitted states and school districts to use federal funds as they pleased. At the other end of the scale, the Clinton Administration, which once was engaged in the Title I campaign for whole-school reform, now has ricocheted to a series of categorical efforts calling for school construction, tutoring efforts, aid to charter schools, school uniforms, and curfews.

At the same time, proposals have been made to convert federal assistance to public schools into tax subsidies to enable students to attend private schools. While federal funds have long been made available to parochial schools to assist in the education of poor children, the new proposals are more far-reaching in their implications and are backed by polls indicating an increasing readiness by poor and minority parents to support vouchers that provide a means to opt out of failing public schools.

Accordingly, 1999 may be as critical a year for federal decision-making about public education as has occurred in more than three decades. The Citizens' Commission on Civil Rights hopes that this report and the ones to follow will inform the coming debate and will provide a tool for parents, educators, students, and the larger community in securing educational change that will enable all children to reach their potential.

Endnotes

[1] *Brown v. Board of Education*, 347 U.S. 483 (1954).

[2] William L. Taylor, "The Continuing Struggle for Equal Educational Opportunity," 71 *North Carolina Law Review* 1693 (1993); Michael J. Puma *et al.*, *Prospects: Final Report on Student Outcomes* (Washington, D.C.: Abt Associates, Inc. 1997) (hereinafter "*Prospects: Final Report*").

[3] Leticia C. Miranda, *Latino Child Poverty in the United States* (Washington, D.C.: Children's Defense Fund 1991) (citing 1990 census data).

[4] U.S. Census Bureau, *The Asian and Pacific Islander Population in the United States: March 1996*, <*http://www.census.gov/population/www/socdemo/race/api96.html*> (last revised Dec. 9, 1997). For a fuller discussion of problems faced by Asian Americans, see Asian Americans/Pacific Islanders in Philanthropy, *An Invisible Crisis: The Educational Needs of Asian Pacific American Youth* (New York, NY: AAPIP 1997).

[5] Michael J. Puma *et al.*, *Prospects: The Congressionally Mandated Study of Educational Growth and Opportunity: Interim Report*, at 18 (Washington, D.C.: Abt Associates, Inc. 1993).

[6] See, e.g., Laura Lippman *et al.*, *Urban Schools: The Challenge of Location and Poverty* (Washington, D.C.: National Center for Education Statistics 1996) (noting that nearly 25% of rural students and more than 40% of urban students attend schools with poverty concentrations of more than 40%).

[7] Puma *et al.*, *Prospects: Final Report*, *supra* note 2, at 12.

[8] 20 U.S.C.A. § 6301 *et seq.* (Supp. 1998).

[9] Elementary and Secondary Education Act of 1965, Public Law No. 89-10, 79 Stat. 27 (1965) (originally codified at 20 U.S.C. §§ 241a *et seq.*, 242 *et seq.*, 331 *et seq.*, 821 *et seq.*, and 1801 *et seq.*; now codified as amended at 20 U.S.C.A. § 2701 *et seq.* (Supp. 1998)).

[10] The current level of funding is almost $8 billion per year. See U.S. Department of Education, *Fiscal Year 1998 Appropriation: Office of Elementary and Secondary Education Summary Table of Accounts*, <*http://www.ed.gov/offices/ous/oese98.html*> (last modified Nov. 14, 1997) (noting that the 1997 appropriation for education for the disadvantaged was $7,799,573,000).

[11] Public Law No. 103-382, 108 Stat. 3518 (Oct. 20, 1994).

[12] The Citizens' Commission examined plans filed by the states with the U.S. Department of Education in the spring of 1996. The Department approved all state plans by July 1, 1996; however, most plans were only conditionally approved. To remove these conditions, most states filed additional information, and a few states submitted revised plans in 1997. The Citizens' Commission reviewed these revisions, as well as comments by peer reviewers during the approval process and the process for removing conditions.

Chapter II

Federal Aid to Education: The Continuing Need and the Varying Response

I. The Persistence of Unequal Schooling

In 1954, the Supreme Court's decision in *Brown v. Board of Education*[1] called upon state and local authorities to dismantle the separate and unequal public school systems they had established to deny opportunity to black children. Forty-five years later, the federal Title I program addresses another version of "separate but equal": the different standards and treatment that economically disadvantaged students, many of them students of color, face in public schools. These conditions, some extrinsic and others intrinsic to schools, include:

- **Concentrated poverty.** Students in high-poverty schools have a much higher probability of encountering obstacles associated with low educational achievement, such as poor health and nutrition, and a greater likelihood of learning disabilities and developmental delays.[2] Unsurprisingly, therefore, studies show a strong correlation between high poverty and low test scores: *school poverty depresses the scores of all students in schools where at least half of the students are eligible for subsidized lunch, and seriously depresses the scores when more than 75% of students live in low-income households.*[3]

- **Unequal resource distribution.** The current system for public school financing has led to widespread inequalities in funding among school districts within and between states. These inequitable systems are disproportionately harmful to minority and economically disadvantaged students because a great many of them live and attend schools in poor districts that are unable to provide educational services which are critical for such students' academic success. Without adequate funding, schools cannot provide such vital services as preschool programs, early reading programs, reduced class size, counseling, parental involvement programs, and professional development.[4]

- **Low standards.** Although available data shows that high standards and a rigorous curriculum can improve student performance, poor children are underrepresented in the more demanding college preparatory track and overrepresented in general and vocational programs.[5] Further, high-poverty schools often have low expectations for their students, awarding high grades for low-level work.[6]

- **Underqualified and inexperienced teachers.** More often than not, poor and minority students are taught by the least-experienced and least-qualified teachers, many of whom are not certified or are teaching in areas outside of their field of certification. High-poverty schools have high rates of teacher mobility and often have serious staffing and absentee problems. Further, such schools are more likely to use aides than teachers for instruction, a problem exacerbated by the use of Title I funds to hire additional aides rather than additional teachers.[7]

- **Tracking and retention in grade.** In addition to low standards and expectations, poor teaching,

and inadequate resources, the access that poor children have to educational opportunity has been diminished by practices such as tracking, ability grouping, and the retention of children in grade. Tracking can take various forms, but generally involves the assignment of children thought to be less able to low-ability groups where they are offered only a watered-down curriculum and little or no opportunity to progress to classes with higher standards and more challenging curriculum. In some systems, ability grouping begins at an early age and whole schools are tracked. These practices persist despite evidence that they have very limited educational utility and often have harmful consequences.[8] Similarly, there is evidence that simply retaining children in grade in elementary school without prompt educational interventions addressed to their needs is an ineffective policy that leads to reduced achievement levels and increased dropout rates later on.[9] At least until 1994 when the law was overhauled, Title I coexisted comfortably with some of these practices as it permitted children to be pulled out of regular classes in order to be instructed in basic skills.[10]

All of these practices have perpetuated dual systems of education that have resulted in educational failure. In several major respects, particularly in its call for high standards and expectations and directing more attention to needed resources, the new Title I is an attempt to break this mold and to recast high-poverty schools as places where children succeed. How the new law is implemented by the federal government and how it is understood in states, districts, and schools will determine whether this ambitious effort will succeed.

II. Title I and the Federal Role in Providing Educational Opportunity

It is often said that public education is a state and local concern. While that is largely correct, it is also true that the Fourteenth Amendment calls upon the *federal* government to assure equality of opportunity in public education. Other provisions of the Constitution, such as those calling for a common defense and promoting the common welfare, establish a national interest in a strong educational system. With the emergence of the United States in the latter half of the twentieth century as an economic and military power and a world leader in democratic government, the federal government increasingly has perceived and asserted a national interest in education.

In advancing the interest of educational opportunity, the federal government has taken on the dual roles of: (1) enacting and enforcing laws designed to advance opportunity[11] and (2) providing substantial amounts of federal financial assistance designed to provide disadvantaged children with educational benefits. With respect to Title I, the centerpiece of these federal assistance programs, a 1991 report for the House Education and Labor Committee observed:

> *With the enactment of the Elementary and Secondary Education Act of 196[5], Congress established as a matter of national policy a role in providing federal financial assistance to meet the needs of economically disadvantaged students. Over the years, this policy has been strengthened and expanded to provide assistance to children who are at risk of failure in the public schools for a variety of reasons. Federal aid has been targeted to low-income preschool children, to handicapped children, to children with limited proficiency in English, to Native American children, to migrant children, to homeless children, and to others with special needs. This expanded Federal role in contributing to the education of disadvantaged children was part of what has been described as a "sea change . . . in the Federal Government's interest in stimulating change and improving quality in public education."*[12]

As the federal government's role in education continues to be debated, Title I is likely to be front and center in the debate. This will be true, if for no

other reason, because of the sheer size of the appropriation and the reach of the program into every congressional district. Title I is the largest federal education program serving grades pre-K through twelve, reaching more than 90% of the nation's school districts.[13] With an annual appropriation that is now nearly $8 billion, it is also the largest single federal nonentitlement program serving children and youth in the country today.[14]

Significantly:

- The U.S. Department of Education estimates that by 1999, Title I will serve more than 10.5 million students in 50,000 schools.[15]
- Title I is one of the largest early-education programs in the nation.[16]
- Title I employs more than 189,000 teachers, reading specialists, instructional assistants, school nurses, counselors, and social workers.[17]
- Title I serves many children with educational needs even if they are not poor.
- Title I serves more children with limited English proficiency than the federal bilingual assistance program.[18]
- Limited English proficient, immigrant, homeless, migrant, disabled, and neglected and delinquent children are all eligible for and frequently receive extra help from the Title I program.

Historically, and to this day, most of Title I's dollars have funded teaching and related positions (e.g., instructional assistants, tutors, and reading specialists) in the early elementary grades and supported remedial and compensatory education in reading and mathematics.[19] Increasingly, however, Title I dollars also fund other instructional and noninstructional programs, including:

- Whole-school reforms (e.g., upgrading the instructional program of an entire school, professional development, and reduced class sizes);
- Middle and high school programs in schools serving many students from low-income families; and
- School-based projects to link low-income students and their families to health and social services, as well as in-school health and social service positions (e.g., counselors and social workers).

Although its impact is limited because federal funds constitute only about 7% of total education expenditures, Title I has helped to narrow the gap between the financing of education in high- and low-income areas. As the U.S. General Accounting Office (GAO) has recently reported, in 37 states, high-poverty districts have less local funding per pupil (once the special needs created by disabilities and poverty are taken into account) than low-poverty districts.[20] State funding eliminated the gap in seven states and the addition of federal funds, which are more targeted than state funds, eliminated it in another nine states. The GAO points out, however, that a substantial number of poor students live in the 21 states where the gap persists. Some view Title I as a program that has

Figure 1. Title I's Coverage

	Number Title I Serves*	Total in U.S.*
Students	10,132,000	45,592,000
Schools	39,800	87,125
Districts	13,145	14,766

* Figures are approximate

Sources: Citizens' Commission's analysis of state performance reports for the 1996-97 school year; National Center for Education Statistics, *Digest of Education Statistics* (1997 ed.); National Center for Education Statistics, *Directory of Public Elementary and Secondary Education Agencies 1995-96*; National Center for Education Statistics, *Public School Students, Staff and Graduate Counts by State, School Year 1996-97*.

modestly reduced funding inequity for poor and minority children but has had little impact in leveraging broader change in state-created inequities.

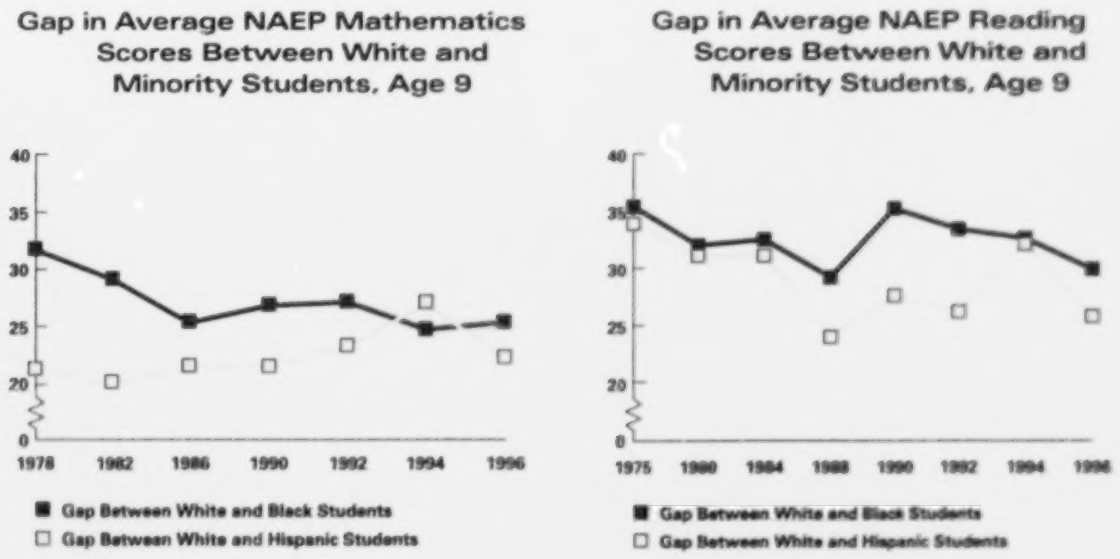
There is also evidence that the program has been effective in teaching basic skills and in ameliorating, to a degree, the persistent achievement gaps between white and minority students. Without the Title I program, these achievement gaps likely would have been much greater.[21] Significantly, results of the National Assessment of Educational Progress (NAEP), a respected national survey of student achievement, show that the gap between white and minority (African American and Latino) students closed by approximately 50% during the 1970s and 1980s, an improvement considered "extraordinary" by experts in the field.[22] Although several factors may have accounted for these impressive gains, several commentators have suggested that the federal Title I program has made a contribution to the reduction in the gap by improving resources for low-income and minority students and by improving basic skills.[23]

More recent research, however, dampens any undue optimism. This research shows that the achievement gaps on NAEP remain considerable, with no consistent gap reduction in recent years.[24] (See Figure 2.)

In addition, data drawn from schools operating under the old law, Chapter 1, has yielded some sobering findings:[25]

- "[C]hildren in high-poverty schools began school academically behind their peers in low-poverty schools, and were unable to close this gap in achievement as they progressed through school."
- "When assessed against high academic standards, most students failed to exhibit the skill mastery in reading and mathematics expected for their respective grade levels. Students in high-poverty schools were, by far, the least able to demonstrate the expected levels of academic proficiency."

Figure 2. NAEP Achievement Gaps



Source: Jay R. Campbell *et. al.*, *NAEP 1996 Trends in Academic Progress* (Washington, D.C.: National Center for Education Statistics 1997).

- "Chapter 1 assistance was, on average, insufficient to close the gap in academic achievement between advantaged and disadvantaged students."

The news is not all negative, however. Even under the flawed Chapter 1 program, there were some, albeit limited, signs that Chapter 1 could help disadvantaged students:

- Chapter 1 generally targeted those students most in need of additional educational assistance.[26]

- Comparisons showed some modest gains in reducing the achievement gap between advantaged and disadvantaged students. However, these gains generally were limited to the "more advantaged portion of the Chapter 1 population."[27]

III. The Changing Face of Title I

Although the Title I program has been part of our educational landscape for more than thirty years, it has undergone a series of changes in its name and mission.

In its early years, much attention was focused on the need for safeguards to deal with misuse of federal Title I funds for purposes other than aiding disadvantaged children.[28] With the advent of the Reagan Administration in 1981, Title I was stripped of many regulatory requirements involving parent involvement and fiscal controls and became Chapter 1 of the Educational Consolidation and Improvement Act.

In 1988, Congress, under the leadership of House Education Committee Chairman Augustus Hawkins and Senator Robert Stafford, sought to address the pervasive emphasis on low-level skills in what was then called Chapter 1. As a result, for the first time, the law required recipients to demonstrate that Chapter 1 programs would support instruction in advanced as well as basic skills.[29] Nonetheless, as several evaluations of the program found, many recipients simply ignored the new requirement. The program continued to be characterized by remedial instruction in basic reading and math skills, and spotty, often nonexistent, emphasis on the advanced and high-level skills all children need in order to succeed.[30]

As Congress began its next reauthorization debate in 1993, a diverse set of national organizations, joined by the Clinton Administration, coalesced to advocate a more complete overhaul of the law. This time, a greater emphasis on high standards and on school and district accountability for achieving the standards was sought, in exchange for freeing schools from detailed procedural requirements on the use of federal funds.[31]

Figure 3. A Brief Chronology

1965 Original enactment of the Elementary and Secondary Education Act, including Title I

1981 Title I renamed "Chapter 1" and stripped of many regulatory safeguards

1988 Hawkins-Stafford amendments to Chapter 1 introduced concepts of accountability for student achievement and schoolwide reform

1994 Improving America's Schools Act reauthorized and substantially revised Chapter 1, now again called Title I, calling for higher standards and more accountability for achievement

In 1994, Congress enacted and President Clinton signed into law the comprehensive Improving America's School's Act (IASA), reauthorizing Chapter 1 (now Title I), and other Elementary and Secondary Education Act (ESEA) programs, for a five-year period.[32] The IASA contained many of the major changes recommended by education and civil rights advocates to ensure that Title I and other federal funds would be used by state and local education agencies to undertake meaningful reforms that would result in substantial academic gains for poor and minority students.[33]

Figure 4. The Old Title I vs. The Current Title I

Old Title I:	Current Title I:
Different standards for different groups of children	Same high standards for *all* children
Lower expectations for poor and minority children	Same high expectations for *all* children
"Dumbed-down" curricula for Chapter 1 children	Same challenging curricula for *all* children
"Basic skills" tests that compare students to each other, not to any objective standards	Higher level tests that measure students' progress toward standards
Tracking, along with separate, pull-out instruction away from the regular classroom and classmates	Rich instruction and support in the the classroom; extra help after school hours
Little training for teachers and aides	Investment in high-quality staff development for teachers and aides
Detailed accounting for dollars	Accountability for results
Successful schools lose money; failing schools continue to fail	Recognition for successful schools; help—then corrective action—for schools that continue to fail

Sources: Title I of the ESEA, 20 U.S.C.A. § 6301 *et seq.* (Supp. 1998); Commission on Chapter 1, *Making Schools Work for Children in Poverty* (Washington, D.C.: Commission on Chapter 1/American Association for Higher Education 1992).

Taken together, the 1994 amendments amount to a major agenda for education reform that can benefit poor and minority children. Title I now requires that states and school districts receiving funds:

- Set **high standards** that all students, including low-income and limited English proficient students, must meet in all subjects.
- Develop **new assessments** that measure the progress of students, schools, and school districts in meeting the high standards.
- Hold school districts and individual schools **accountable** for showing continuous improvements in student performance, until all students achieve at high levels.
- **Target resources** to schools and districts with the highest concentrations of children from low-income families.
- Encourage **schoolwide improvements** in schools where more than half the children are from low-income families.
- Ensure that eligible schools and districts have the **capacity** to teach to high standards, including adequate **professional development**, and, where necessary, the provision of extra resources to needy schools.

In the following chapters, we describe the key components of the new Title I law: (1) standards, (2) assessment, (3) accountability, and (4) capacity-building. With respect to each key component, the report describes its need in the context of education reform; what the new Title I law actually requires; how the U.S. Department of Education has interpreted, revised, and in some cases, disregarded the law; and, finally, the extent to which states have made (or failed to make) commitments to comply with these key provisions. Chapter VII assesses the extent to which recipients have availed themselves of the new opportunity for waivers and seeks to address important equity concerns about whether the waivers have furthered or hindered the purposes of the law with respect to the needs of poor children. Chapter VIII then outlines successful approaches to the educational reforms called for under the new Title I in three selected city school systems: San Antonio, Texas; Philadelphia, Pennsylvania; and Memphis, Tennessee. At the conclusion, the Citizens' Commission offers some recommendations designed to make tangible the promise and vision of Title I—to assist children served by the program to achieve high academic standards—in schools around the nation.

Endnotes

[1] 347 U.S. 483 (1954).

[2] See Michael J. Puma *et al.*, *Prospects: The Congressionally Mandated Study of Educational Growth and Opportunity: Interim Report*, at 18 (Washington, D.C.: Abt Associates, Inc. 1993); U.S. General Accounting Office (GAO), *School Finance: State and Federal Efforts to Target Poor Students* (GAO/HEHS-98-36), at 7 (Washington, D.C.: U.S. GAO 1998) (hereinafter "*School Finance*").

[3] Michael J. Puma *et al.*, *Prospects: Final Report on Student Outcomes*, at 12 (Washington, D.C.: Abt Associates, Inc. 1997) (hereinafter "*Prospects: Final Report*").

[4] House Committee on Education and Labor, 102d Congress, 1st Session, *A Report on Shortchanging Children: The Impact of Fiscal Inequity on the Education of Students At Risk*, at xi-xii. (1991) (prepared by William L. Taylor and Dianne M. Piché) (hereinafter "*Shortchanging Children*").

[5] The Education Trust, *Education Watch: The 1996 Education Trust State and National Data Books*, at 8-9 (Washington, D.C.: The Education Trust 1996).

[6] *Id.* at 11.

[7] *Id.* at 7 (quoting Linda Darling-Hammond, "The Role of Teacher Expertise and Experience in Students' Opportunity to Learn," *in Strategies for Linking School Finance and Students' Opportunity to Learn*); Puma *et al.*, *Prospects: Final Report*, *supra* note 3, at 58.

[8] See, e.g., Jeannie Oakes, *Keeping Track: How Schools Structure Inequality* (New Haven, CT: Yale University Press 1985); Jeannie Oakes *et al.*, *Multiplying Inequalities: The Effects of Race, Social Class and Tracking on Opportunities to Learn Mathematics and Science* (Santa Monica, CA: Rand Corp. 1990); Amy Stuart Wells and Irene Serna, "The Politics of Culture: Understanding Local Political Resistance to Detracking in Racially Mixed Schools," 66 *Harvard Educational Review* 93 (1996).

[9] See, e.g., L.A. Shepard and M.L. Smith, eds., *Flunking Grades: Research and Policies on Retention* (New York, NY: Falmer Press 1989).

[10] The 1994 reauthorization increased opportunities for whole-school reform and discouraged pull-outs in favor of supplemental instruction after school or during the summer for children in need of special assistance. See, e.g., Title I of the Elementary and Secondary Education Act (ESEA) §§ 1114 (b)(1)(B)(iii), 1115 (c)(1)(D), 20 U.S.C.A. §§ 6314 (b)(1)(B)(iii), 6315 (c)(1)(D) (Supp. 1998). In describing the harmful effects of retention in grade, the Citizens' Commission is not advocating "social promotions," but rather the adoption of timely educational interventions to prevent youngsters from falling behind.

[11] See, e.g., Title VI of the 1964 Civil Rights Act, 42 U.S.C.A. § 2000d *et seq.* (1994 & Supp. 1997), 34 C.F.R. Parts 100 and 101 (1997); Title IX of the Education Amendments of 1972, 20 U.S.C.A. §§ 1681-1688 (1990 & Supp. 1997), 34 C.F.R. Part 106 (1997); section 504 of the Rehabilitation Act of 1973, 29 U.S.C.A. § 794 (Supp. 1997), 34 C.F.R. Part 104 (1997); and the Individuals with Disabilities Education Act, 20 U.S.C.A. § 1400 *et seq.* (Supp. 1998), 34 C.F.R. Part 300 (1997).

[12] *Shortchanging Children*, *supra* note 4, at 49 (footnotes omitted) (citing Elementary and Secondary Education Act of 1965, Public Law No. 89-10, 20 U.S.C. §§ 2701 *et seq.*; Head Start, Public Law No. 88-452; Chapter 1, §§ 121-122; Education for All Handicapped Children Act, Public Law No. 94-142, 20 U.S.C. §§ 1401-1461; Bilingual Education Act (Title III of ESEA), 20 U.S.C. § 880b; Indian Elementary and Secondary School Assistance Act, Public Law No. 92-318; Stewart B. McKinney Homeless Assistance Act, Public Law No. 100-77, 101 Stat. 482-538; and Title VI of the Civil Rights Act of 1964, Pub. L. No. 88-352, 42 U.S.C. § 2000d *et seq.*; and quoting Bailey and Mosher, *ESEA: The Office of Education Administers a Law* (1968)).

[13] See U.S. GAO, *School Finance*, *supra* note 2, at 1 nn. 3-4 (citing U.S. Department of Education, *Targeting, Formula, and Research Allocation Issues: Focusing Federal Funds Where the Needs Are Greatest* (1993)).

[14] See FY1998 Department of Education Appropriations Act, Public Law No. 105-78, 111 Stat. 1467, 1496-97 (1997) (appropriating $8,021,827,000 for Title I for 1998).

[15] U.S. Department of Education, *Fiscal Year 1999 Budget Summary*, at 17 (Feb. 1998).

[16] In 1994-95, there were more than 646,000 preschool and kindergarten participants in Title I programs. Half of all children served in 1994-95 were in pre-K through grade three. Herbert Jacobson, *State Chapter 1 Participation and Achievement Information—1994-95: Summary Report*, at 24 (Washington, D.C.: U.S. Department of Education 1996).

[17] *Id.* at 35.

[18] In 1994-95, Title VII bilingual education programs served approximately 299,000 limited English proficient (LEP) students, while Chapter 1 served 1,482,943 LEP students. Reynaldo F. Macías and Candace Kelly, *Summary Report of the Survey of the States' Limited English Proficient Students and Available Educational Programs and Services 1994-95*, at Table 4.2 (Washington, D.C.: George Washington University 1996).

[19] In 1994-95, 76% of Chapter 1 students received reading instruction. Jacobson, *supra* note 16, at 28. Although the focus of Title I programs is expanding to include subjects other than math and English, a preliminary review of states' Title I performance reports for the 1996-97 school year indicates that Title I dollars still largely support reading and math instruction.

[20] U.S. GAO, *School Finance*, *supra* note 2, at 12.

[21] Puma *et al.*, *Prospects: Final Report*, *supra* note 3, at 55-56 (noting that study's design did "not allow us to observe directly whether Chapter 1 students would have been worse off (i.e., whether . . . we might expect the gaps to grow over time, [and that] without a special intervention, it may be that Chapter 1 is helping participating students but is too weak an intervention to bring them up to par with their classmates[)] . . . .). See also Geoffrey D. Borman *et al.*, "The Longitudinal Achievement of Chapter 1 Students: Preliminary Evidence from the *Prospects* Study," 3 *Journal of Education for Students Placed at Risk* (forthcoming); Geoffrey D. Borman and Jerome V. D'Agostino, "Title I and Student Achievement: A Meta-Analysis of Federal Evaluation Results," 18 *Educational Evaluation & Policy Analysis* 309, 324 (1996) (concluding that Title I evaluations "suggest . . . that without the program, children served over the last 30 years would have fallen further behind academically"); U.S. Department of Education, Office of Educational Research and Improvement, *The Effectiveness of Chapter 1 Services, National Assessment of Chapter 1*, at 7-17 (1986) (reporting modest gains by disadvantaged students in reading since 1965 and suggesting that students receiving Chapter 1 services have larger increases than those who are not).

[22] William L. Taylor, "The Continuing Struggle for Equal Educational Opportunity," 71 *North Carolina Law Review* 1693, 1697 (1993) (citing Marshall Smith and Jennifer O'Day, "Educational Equity: 1966 and Now," *in* Deborah A. Verstegen and James G. Ward, eds., *Spheres of Justice in Education: The 1990 American Education Finance Association Yearbook*, at 75 (1991)). See also Olatokunbo S. Fashola and Robert E. Slavin, "Promising Programs for Elementary and Middle Schools: Evidence of Effectiveness and Replicability," 2 *Journal of Education for Students Placed at Risk* 251 (1997).

[23] See, e.g., Jennifer A. O'Day and Marshall S. Smith, "Systemic Reform and Educational Opportunity," *in* Susan Fuhrman, ed., *Designing Coherent Educational Policy: Improving the System*, at 257 (1993); Taylor, *supra* note 22, at 1699; David W. Grissmer, Sheila Nataraj Kirby, Mark Berends, and Stephanie Williamson, *Student Achievement and the Changing American Family: An Executive Summary* (Santa Monica, CA: Rand 1994).

[24] Jay R. Campbell *et al.*, *NAEP 1996 Trends in Academic Progress*, at B-43, C-67 (Washington, D.C.: National Center for Education Statistics 1997). See also Fashola and Slavin, *supra* note 22, at 251.

[25] Puma *et al.*, *Prospects: Final Report*, *supra* note 3, at iv-v.

[26] *Id.* at v.

[27] Borman *et al.*, *supra* note 21.

[28] See Ruby Martin and Phyllis McClure, *Title I: Is It Helping?* (Washington Research Project of the Southern Center for Studies in Public Policy and the NAACP Legal Defense and Educational Fund, Inc. 1969).

[29] See August F. Hawkins-Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988, Public Law No. 100-297, 102 Stat. 140 (1988).

[30] See, e.g., Commission on Chapter 1, *Making Schools Work for Children in Poverty* (Washington, D.C.: Commission on Chapter 1/American Association for Higher Education 1992); U.S. Department of Education, *Statement of the Independent Review Panel of the National Assessment of Chapter 1* (Feb. 1993).

[31] See, e.g., Commission on Chapter 1, *supra* note 30; Council of Chief State School Officers, *High Performance Learning Act: Recommendations on the Reauthorization of the Hawkins/Stafford Amendments of 1988* (1992); National Association of State Boards of Education, *Recommendations for Reauthorization of the Elementary and Secondary Education Act of 1965* (1992); National Association of State Coordinators of Compensatory Education, *Position Paper on the Reauthorization of Chapter 1 of Title I of the Elementary and Secondary Education Act of 1965, as amended* (1993); National Coalition of Title I/Chapter 1 Parents, *Summary of Position on the Reauthorization of Chapter 1* (1993).

[32] Improving America's Schools Act (IASA), Public Law No. 103-382, 108 Stat. 3518 (1994) (codified at 20 U.S.C.A. § 6301 *et seq.* (Supp. 1998)).

[33] The IASA also contained significant amendments with respect to the provision of gender equity under ESEA programs, including Title I and the Women's Educational Equity Act. These reforms, while important, are not the subject of this report.

Chapter III

Standards

I. The Case for High Standards for All Students

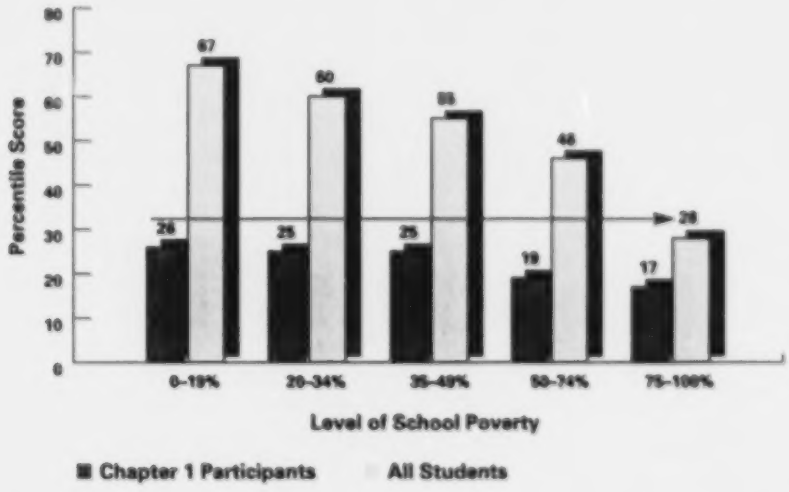
I don't allow my teachers to use poverty as an excuse. I tell them I have no right to determine the fate of the child.

Gloria Polanco-McNealy, Principal,
Del Norte Heights Elementary
School, El Paso, Texas[1]

Where a child lives should not determine how well that child is taught. Yet that is precisely the condition for many minority students in low-income communities, as evidenced by their poor performance. Studies show that the higher a school's concentration of low-income students, the lower the achievement of all of its students. (See Figure 1.)

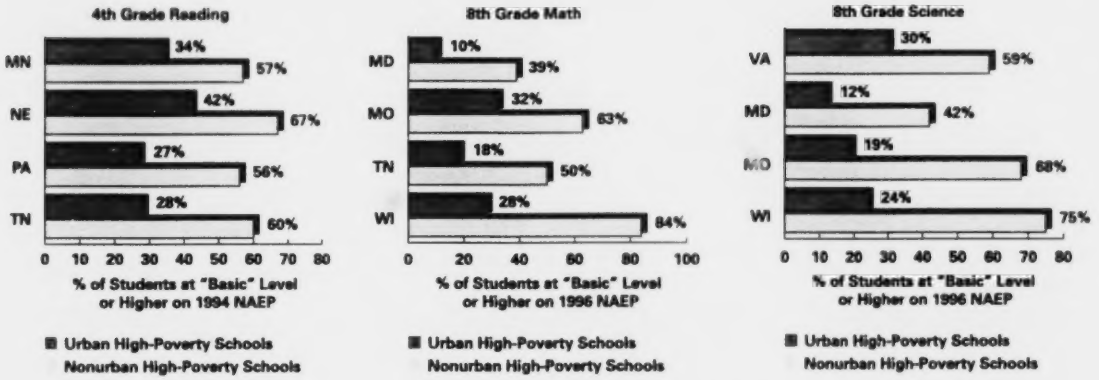
One reason for the correlation between poverty and performance is that higher poverty schools set lower standards for, and have lower expectations of, their students than more middle-class schools. Student achievement considered an "A" in a high-poverty school often would be rated a "C" in a low-poverty school.[2] For example, at one Sacramento elementary school that had twice won the state "achieving

Figure 1. Average 4th Grade Reading Achievement



Source: U.S. Department of Education, *Reinventing Chapter 1: The Current Chapter 1 Program and New Directions (Final Report of the National Assessment of the Chapter 1 Program)*, at 66 (Washington, D.C.: U.S. Department of Education 1993). Data excludes Chapter 1 participants in schoolwide programs.

Figure 2. The Urban Effect


4th Grade Reading
MN 34% 57%
NE 42% 67%
PA 27% 56%
TN 28% 60%
0 10 20 30 40 50 60 70 80
% of Students at "Basic" Level or Higher on 1994 NAEP
8th Grade Math
MD 10% 39%
MO 32% 63%
TN 18% 50%
WI 28% 84%
0 20 40 60 80 100
% of Students at "Basic" Level or Higher on 1996 NAEP
8th Grade Science
VA 30% 59%
MD 12% 42%
MO 19% 68%
WI 24% 75%
0 10 20 30 40 50 60 70 80
% of Students at "Basic" Level or Higher on 1996 NAEP
Urban High-Poverty Schools
Nonurban High-Poverty Schools

Source: Education Week, *Quality Counts '98: The Urban Challenge: Public Education in the 50 States*, at 12 (Jan. 8, 1998). Table depicts data from the states with the largest achievement gap between high-poverty urban and nonurban schools. Reprinted with the permission of Education Week.

schools" award, the principal was surprised to learn that students were reading, on average, at the 30th percentile.[3] The opinion of one school district psychologist is telling.

> *When we get them at school, the wood is already made.... You get a kid who's been neglected, you get dry rot in there, and the best you can do is paint it, cut out some of the bad parts, concentrate on the good parts. We can also make it part of the table, but it won't be up front, it can't be integral. I'll let you be part of society, and maybe you'll deliver the pizzas.*[4]

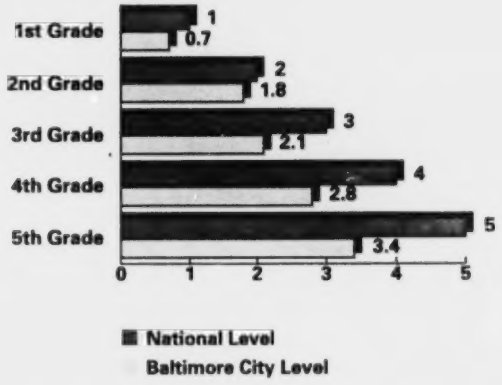
The result of these low expectations is most visible in central cities, highly segregated by race and income, where student achievement lags far behind that of nonurban schools. (See Figure 2.)

Even when students have access to early childhood development programs and enter school ready to learn, high-poverty schools do not set high standards for them. Because less is expected of these students year after year, many fall further and further behind. For example, in Baltimore, **Maryland**, children enter first grade only a few months behind the national average, but on average are more than one and a half years behind in combined reading and math achievement by the time they reach fifth grade.[5] (See Figure 3.) In this and other high-poverty school systems, the longer students remain in the system, the greater the achievement gap.

As students make their way into middle schools and high schools, school districts continue to set lower standards for poor and minority students. Poor, African American, and Latino students are less likely to be enrolled in college preparatory courses, and may be "tracked" or steered away from more rigorous courses such as algebra.[6]

Responding to pervasive evidence of low standards and expectations, Congress rewrote the Title I statute in 1994 to require an entirely new approach.[7] This chapter describes the new law's requirements for the development of state standards; how the U.S. Department of Education ("Department") construed key provisions in the law with respect to standards; how states described to the Department their plans to comply with the standards requirements; and, in the end, what the Department actually accepted from states with respect to standard-setting.

Figure 3. Reading Levels



Source: Liz Bowie, "Pupils lose ground in city schools," *The Sun* (Baltimore, MD), Nov. 12, 1997, at 1A. "Scoring is based on the months of a school year. For example, the national level for second-graders at the beginning of the school year is 2.0; Baltimore city students are reading at first grade, 8 months of instruction for a score of 1.8." *Id.*

Graphic by Emily Holmes, *The Baltimore Sun.*

II. What the New Title I Requires: High Standards for All Students

First and foremost, to receive Title I funds, states are required by the law to demonstrate to the Department that they have adopted challenging academic standards.[8] Following on the heels of standards, states are required to develop or adopt new assessments to measure attainment of the standards. Finally, states are required to establish systems, based largely on the results of these assessments, for holding schools and school districts accountable for meeting the standards.

Significantly, the standards established for Title I participants must be the same standards expected of *all* children within the state.[9] In contrast to the historic emphasis on basic skills, the new Title I calls on states, districts, and schools to "break with past practice by replacing minimum standards for some children with challenging standards for all."[10]

Figure 4. Sample Content Standard

New York has a three-tiered system for content standards. It first describes a broad expectation, then divides that standard into subtopics, and finally provides a detailed explanation of what students must do in order to satisfy the standards.
New York Language Arts Standard 1, Grades 2-4 Students will read, write, listen, and speak for information and understanding.
Reading: Students will read a minimum of 25 books or the equivalent per year across all content areas and standards. *Writing:* Students will write an average of 1000 words per month across all content areas and standards. *Listening:* Students will listen on a daily basis. *Speaking:* Students will speak on a daily basis.

Source: University of the State of New York and the State Education Department, *English Language Arts Resource Guide: Core Curriculum*, at 16 (undated), <*http://www.nysed.gov*> (visited Aug. 17, 1998).

Figure 5. Standards In Practice: The New York Example

New York disseminates a resource guide, tied to its standards, that describes more specifically what students should be able to do. For example, with respect to the reading component of its Language Arts Standard 1 (see Figure 4), the state expects the following:

WHAT STUDENTS READ, Grades 2 to 4, for information and understanding

- Read from informational texts, such as:
  - books
  - biographies
  - age-appropriate reference materials
  - children's magazines/newspapers
  - electronic-based texts, such as encyclopedias

WHAT STUDENTS DO FOR INFORMATION AND UNDERSTANDING: The competencies that Grades 2 to 4 students demonstrate as they learn to read include to:

- Locate and use library media resources, with assistance, to acquire information
- Read unfamiliar texts independently to collect and interpret data, facts, and ideas
- Read and understand written directions
- Locate information in a text that is needed to solve a problem
- Identify main ideas and supporting details in informational text
- Recognize and use organizational features of texts, such as table of contents, index, page numbers, and chapter headings/subheadings to locate information
- Relate data and facts from informational texts to prior information and experience
- Compare and contrast information on one topic from two different sources
- Identify a conclusion that summarizes the main idea
- Select books independently to meet informational needs
- Identify and interpret significant facts taken from maps, graphs, charts, and other visuals
- Use graphic organizers to record significant details from informational texts

WHAT STUDENTS DO ACROSS ALL FOUR ENGLISH LANGUAGE ARTS STANDARDS: The competencies that Grades 2 to 4 students demonstrate as they learn to read include to:

- Identify purpose for reading
- Use letter-sound correspondence, knowledge of grammar, and overall context to determine meaning
- Use decoding strategies, such as sounding out words, comparing similar words, breaking words into smaller parts, and looking for word parts (root words, prefixes, and suffixes)
- Use self-monitoring strategies, such as rereading and cross-checking
- Apply corrective strategies, using classroom resources such as teachers, peers, and reference tools
- Recognize the difference between phrases and sentences
- Read with attention to sentence structure and punctuation, such as periods, question marks, and commas to assist in comprehension
- Engage in independent silent reading
- Locate the name of the author, illustrator, title page, table of contents, index, and chapter headings
- Recognize and discriminate among a variety of informational texts
- Determine the meaning of unfamiliar words by using context clues, dictionaries, and other classroom resources
- Read aloud at appropriate rate
- Read with increasing fluency and confidence from a variety of texts
- Maintain a personal reading list to reflect reading goals and accomplishments
- Use computer software to support reading

Source: University of the State of New York and the State Education Department, *English Language Arts Resource Guide: Core Curriculum*, at 16 (undated), <*http://www.nysed.gov*> (visited Aug. 17, 1998).

Figure 6. Maine Student Performance Standards

Novice: Novice Maine students display partial command of essential knowledge and skills. With direction, these students apply their knowledge to complete routine problems and well-defined tasks. The students' communications are rudimentary, and sometimes ineffective.
Basic: Basic Maine students demonstrate a command of essential knowledge and skills with partial success on tasks involving higher-level concepts, including applications of skills. With some direction, these students make connections among ideas and successfully address problems and tasks. Their communications are direct and reasonably effective, but sometimes lack the substance or detail necessary to convey in-depth understanding of concepts.
Advanced: Advanced Maine students successfully apply a wealth of knowledge and skills to independently develop new understanding and solutions to problems and tasks. These students are able to make important connections among ideas and communicate effectively what they know and are able to do.
Distinguished: Distinguished Maine students demonstrate in-depth understanding of information and concepts. The students grasp "big ideas" and readily see connections among ideas beyond the obvious. These students are insightful, can communicate complex ideas effectively (and often creatively), and can solve challenging problems using innovative, efficient strategies.

Source: "MEA Performance Level Definitions," *in* Maine Office of Compensatory Education, *State Performance Report Title I, Parts A&D Elementary and Secondary Education Act Helping Disadvantaged Children Meet High Standards* (Mar. 13, 1998).

The standard-setting provisions of Title I call on the states to define, for the first time in many instances, what the state expects its students to know and be able to do in each subject taught. Specifically, each state is required by Title I to develop by the 1997-98 school year:

- **Content Standards.** Content standards spell out what the state believes all children should know and be able to do in each subject. (See Figure 4, Figure 5.) States are permitted to decide the subjects for which they will have standards but, at a minimum, all states must have had standards in mathematics and reading/language arts in place by the 1997-98 school year in order to comply with the new law.[11] Standards developed under the voluntary Goals 2000 program, or another process, must also conform to the requirements of Title I.[12] (See Figure 8.)

- **Performance Standards.** Performance standards describe the different levels of proficiency that students demonstrate (usually on a standardized test) with respect to the knowledge and skills set forth in the content standards. Title I requires that states describe at least three levels of performance: "advanced," "proficient," and "partially proficient."[13] Under Title I's scheme, "partially proficient" is not a minimum standard but rather a level providing information about the progress of lower performing children toward achieving the proficient and advanced standards. "Not proficient" is the unspoken fourth level. While all states must have at least these performance levels, some states have attached their own labels to them. (See Figure 6.) Whatever they are called, the purpose of these benchmarks is to establish progressively higher levels of student achievement. (See Figure 7.) As with con-

Figure 7. Maryland Performance Standards

Maryland performance standards center upon the Maryland School Performance Assessment Program (MSPAP). Based upon their performance on the MSPAP, students are assigned to five proficiency levels. Schools' performances are then evaluated based upon their students' proficiency levels.

Grade 3 Mathematics Proficiency Levels for 1993
MSPAP scale scores generally range between 350 and 700. The 1992 MSPAP scale scores were designed to have a mean of about 500. Proficiency levels are designed to inform and guide interpretation of MSPAP scale scores. Students at a proficiency level are likely to be able to display most of the knowledge, skills, and processes at that level and lower proficiency levels. The levels from most to least advanced are as follows:

Level 1. MSPAP Scale Score Range 626-700. Students at Level 1:
• Develop and apply problem-solving strategies to solve open-ended problems. • Apply estimation in problem solving. • Evaluate a solution to a problem. • Communicate thinking concerning the solutions to multi-step problems. • Apply geometric concepts and graphical data in real-life situations. • Solve problems involving multiple steps using addition and multiplication. • Integrate geometry and arithmetic operations to solve real world problems. • Use basic probability concepts to make predictions in an abstract setting.

Level 2. MSPAP Scale Score Range 583-625. Students at Level 2:
• Apply problem-solving strategies to investigate geometric concepts. • Justify and explain reasoning used to make predictions and draw conclusions. • Give an accurate and complete justification of application of patterns, statistical predictions, and two and three dimensional geometric relationships. • Demonstrate connections between measurement and geometry. • Demonstrate connections between physical materials and mathematical ideas. • Select and use addition and multiplication to solve problems. • Solve two-step problems using addition and multiplication. • Write a rule using characteristics of numbers such as odds or evens. • Show the effects of operation on numbers. • Demonstrate understanding of symmetry and use it to solve real-world problems. • Interpret and use information from a display. • Collect, organize, and display data. • Apply multiple probability concepts in a concrete situation. • Create and explain an original pattern. • Apply estimation in working with quantities, measurement, and computation. • Estimate and verify measurements.

Level 3. MSPAP Scale Score Range 531-582. Students at Level 3:
• Find more than one solution to a given problem. • Apply problem-solving strategies to everyday real-life problems. • Explain solution processes using words and numbers. • Communicate an explanation of a solution to a mathematical problem involving basic probability and spatial concepts. • Explain estimation strategies in relation to magnitude of numbers. • Use estimation strategies to determine a reasonable answer. • Exhibit evidence of reasoning relating spatial concepts to concrete situations. • Use mathematical reasoning based on whole number computation. • Connect mathematical concepts to other disciplines. • Make connections between topics in mathematics. • Exhibit a connection between a rule and an event. • Add money with regrouping. • Use addition, multiplica-

tion, and division to solve problems. • Use technology to add and multiply. • Create pictorial representations of division. • Compare fractions using pictorial models. • Demonstrate connections between arithmetic operations and geometry. • Solve problems by applying geometric relationships and using geometric reasoning. • Apply estimations in measurement. • Use appropriate unit of measurement. • Use appropriate measuring tool. • Use counting to determine area. • Solve real-world problems involving length and area. • Demonstrate symmetry and congruency. • Measure using nonstandard and standard units. • Organize and display data as a graph. • Use deductive reasoning to interpret data to make predictions. • Apply probability concepts to make predictions. • Apply basic probability concepts in a given situation. • Recognize, describe, and extend a pattern.

Level 4. MSPAP Scale Score Range 489-530. Students at Level 4:
• Communicate information obtained from data displays. • Exhibit correct reasoning based on supplied data. • Observe, collect, and organize data. • Use probability concepts to interpret a display, chart, or graph. • Develop conjectures based on given data and mathematical reasoning. • Add more than two addends with regrouping. • Show fractional parts of a whole. • Construct number meanings using real-world experiences. • Round distances to solve a problem. • Use estimation in measuring length and in computation. • Use reasoning in geometry. • Recognize a pattern.

Level 5. MSPAP Scale Score Range 350-488. Students at Level 5:
• Construct number meanings using real-world experiences and physical materials. • Color models to demonstrate the meaning of fractional parts. • Describe a number as odd or even. • Read temperature. • Interpret information from displays. • Observe patterns. • Describe characteristics of two-dimensional shapes and effects of combining them.

Students at Level 5 are likely to have provided some responses to assessment activities at Level 4, but not enough assessment activities to place them at proficiency Level 4.

School Standards

Maryland has three performance standards for its schools and districts. The state's challenge to itself is for all schools to reach the satisfactory standard by the year 2000:

Excellent: "A highly challenging and exemplary level of achievement indicating outstanding accomplishment in meeting the needs of students" as demonstrated by having 70% of students scoring at level 3 or above, with at least 25% of students at level 2 or higher.

Satisfactory: "A realistic and rigorous level of achievement indicating proficiency in meeting the needs of students," as demonstrated by having 70% of students scoring at proficiency level 3 or above.

Not Met: "A level of achievement indicating that more work is needed to attain proficiency in meeting the needs of students" because fewer than 70% of students scored at level 3 or above.

Source: Maryland State Department of Education, *Fact Sheet 6: Maryland School Performance Assessment Program* (Feb. 1998), <*http://www.msde.state.md.us/SCO/factsheets/fact6.html*> (visited Aug. 18, 1998); Maryland State Department of Education, *Maryland School Performance Report 1997: State and School Systems*, at 6 (Dec. 1997); Maryland State Department of Education, *Score Interpretation Guide: 1996 MSPAP and Beyond* (Dec. 1996), <*http://www.mdk12.org/data/mspap/scoring/index.html*> (visited Aug. 18, 1998).

tent standards, the new law sets forth a 1997-98 school year deadline for states to have established performance standards.

The law also provides for:

- **Time to Implement New Law.** Congress recognized that the transition to a state standards-based system could not be accomplished overnight. Even with the jump-start from the Goals 2000 program, most states would not develop more challenging standards and assessments by the time the new Title I went into effect. Therefore, the law allowed states additional time (by 1997-98) to develop their standards systems. The deadline for full implementation is the conclusion of the five-year reauthorization period.

- **State Plans.** Title I imposed a May 15, 1996, deadline on states to file "state plans" with the Department describing, among other things, their standards systems, along with any transitional measures they planned to use. The law required approval by the Secretary of each state's plan by July 1, 1996, for the state to continue receiving Title I funds.[14] In the alternative, a new provision in the Improving America's Schools Act permitted states seeking to participate in multiple programs under the Elementary and Secondary Education Act (ESEA) to submit a consolidated state plan and application.[15]

- **Regulations.** Congress authorized the Department to issue, by July 1, 1995, regulations determined to be necessary to ensure compliance with the new Title I. Prior to the publication of the proposed regulations in the Federal Register, the Secretary was required by Congress first to elicit advice from educators, parents, and others involved with the program, and then to invite some of these commenters to participate in a "negotiated rulemaking process." Negotiations were to cover, at minimum, the subjects of schoolwide programs, standards, and assessment.[16]

- **Nonregulatory Guidance.** Congress also directed the Department to prepare and distribute a policy manual for states, school districts, parents, and others, on or before January 1, 1996. The purpose of the guidance was to assist with both implementation and enforcement.[17]

III. The U.S. Department of Education's Enforcement Record and State Compliance

The early months and years of the five-year authorization period were a critical time during which Department leadership was needed to set into motion the bold changes called for by the new law. But shortly after President Clinton signed the Improving America's Schools Act on October 20, 1994—a law that was largely the brainchild of his Administration—the 1994 mid-term elections shifted the balance of power in Congress. The new Republican majority in Congress began promoting a variety of legislative initiatives to diminish the federal role in domestic programs.[18] The Department also during this time found itself beset by a host of management and internal problems, including a complete reorganization of the Office of Elementary and Secondary Education, a government shutdown in November 1995, and employee furloughs. Whether as a result of the 1994 election, its own laissez-faire ideology, its internal disorganization, or some combination of these factors, the Clinton Administration, almost immediately after the election, began to exhibit reluctance to tell state and local authorities what was expected of them under the new law, or to implement key provisions of the law that were designed to equalize learning opportunities between poor and non-poor children. In the end, delays in implementation, faulty interpretations, and breaches in enforcement of the law became the order of the day.

Figure 8. The Link Between Title I and Goals 2000

Prior to reauthorizing Title I, Congress enacted a new program, Goals 2000, which provides states with federal funds to develop new standards and assessments.[21] With a relatively small appropriation, Goals 2000 was intended to stimulate the voluntary development of content standards, and assessments linked to those standards, in subjects such as English, math, science, history, geography, foreign languages, the arts, civics and government, and economics. Although state participation in Goals 2000 was purely voluntary, the Clinton Administration decided that Goals 2000 should be the framework for reauthorizing Title I. Thus, whatever standards or assessments states developed under Goals 2000 (or under their own reform laws) also must be used for the Title I program.

A. High Standards for All Children, But Only in Some Subjects

One of the Department's first serious breaches occurred in connection with the breadth of standards contemplated by the new law. Many Title I advocates believed that Congress was unambiguous about the need to transform Title I from a remedial reading and math program into one that assisted schools serving poor children to improve the achievement of students in a broad range of challenging academic content.[19] In particular, many believed that the requirements for high standards for all children under Title I would extend to all subjects in which a state had standards and assessments.[20]

This view of the law was also consistent with Goals 2000, the program under which many states had begun to develop their standards. Goals 2000 explicitly calls on states to develop high standards in subjects other than reading and mathematics. (See Figure 8.)

Nevertheless, the Department took a different view. In proposed regulations circulated during the negotiated rulemaking process, as well as in a version later published for comment in the Federal Register, the Department called for states to use Goals 2000 (or other) standards and assessments *only in mathematics and reading/language arts* for Title I purposes.[22] At the negotiated rulemaking meetings, representatives of the National Coalition of Title I Parents objected strenuously to this limitation, out of concern that states with high standards in subjects other than reading and math might not actually apply them to Title I students and schools.[23] Despite these objections, the Department published the proposed regulation as originally written, requiring standards and assessments for Title I purposes only in these two subjects. It then asked for public comment on the issue, at which time several advocacy organizations registered their objections.

But the Department did not change its mind. On May 10, 1995, shortly after the proposed regulations were published and before comments from the public were due, Assistant Secretary for Elementary and Secondary Education Thomas Payzant reportedly stated that Congress never intended for schools to be held accountable in all content areas, since Title I primarily pays for reading and math instruction.[24] As a number of commenters pointed out, the Administration's reasoning was faulty on two counts. First, nothing in the statute limited Title I funding to reading and math; if anything, recipients are encouraged to use their allocation to improve performance in all subjects. Second, a recipient's federal obligations are not limited to the specific areas or subjects on which federal funds are actually expended.[25] But, not surprisingly, the Department did not correct its misstatement in the regulations it finally promulgated on July 3, 1995. Instead, it attempted to appease its critics by adding hortatory language to the effect that the Secretary "encourages" states to add subjects other than reading and math to their accountability systems.[26]

This narrow view threatens to undermine efforts to bring high standards, and aligned curriculum and

instruction in subjects like science and social studies, to high-poverty schools. Experience demonstrates that when subjects are not counted in the accountability equation, their teaching is neglected. Several advocates and civil rights organizations have warned the Department that its policy "will send a clear signal that while these subjects are important to more affluent children, the only subjects that count for the poor are reading and math."[27]

Following the Department's lead, a number of states are limiting accountability to math and reading. Several states, such as those listed below, have developed standards in several areas—but hold districts and schools accountable for results only in mathematics and reading/language arts:

- In its consolidated state plan, **Delaware** informed the Department that it had developed content standards in mathematics, English language arts, science, and social studies in June 1995 and was developing standards in additional subjects. The state also reported that assessments linked to these standards were being developed and would be used for Title I purposes beginning in the 1998-99 school year. Until then, the state said, it would use a transitional assessment for Title I accountability in math and reading/language arts. The difficulty is that the state furnished the Department no evidence that it intended, once final assessments were up and running in science and social studies, to include their results in the state's Title I accountability system. In fact, the plan is completely silent on the matter. Thus, the Department has no assurance that, as required by Title I, students will be expected to master the broad range of material expected by the state for all its students.[28]

- **Kansas** has content standards in mathematics, science, social studies, reading, and writing that are aligned with the Kansas Assessment System. But the state plan requires only that reading and math scores be used to determine whether Title I schools are making adequate progress.[29]

- Although **Virginia** indicated in its state plan that it had adopted standards in a wide range of subjects (including English, mathematics, history and social sciences, and science), and discussed plans to develop assessments aligned with these standards, the plan itself limits Title I accountability (and school improvement) during the transition period to mathematics and reading/language arts. The plan does not clearly specify, and the Department did not ask, when, or whether, the state will expand its Title I accountability system to include other subjects once final assessments are in place.[30]

B. The Local Option: Dual Standards Within States

Abandoning standards in subjects other than mathematics and reading/language arts was only the first of several Administration deviations from the letter and spirit of the new law. Early in 1995, the U.S. Department of Education decided that states could allow local school districts to establish their own content standards, paving the way for the perpetuation of the very same dual standards for poor and non-poor the new law intended to cast aside.

This decision surprised many who had been closely involved with the law's reauthorization. After all, for years, Title I had supported a two-tiered educational structure, with higher expectations for white and more affluent students and lower expectations for minorities and the poor. There was virtually complete, bipartisan agreement during the reauthorization that the first step toward dismantling this system should be the establishment of high standards for all children, regardless of their race or class, the school they attend, or the community in which they live. A review of the legislative history of both Goals 2000 and the new Title I reveals no evidence that these reform laws envisaged anything other than a coherent, *statewide* system of standards.[31] The Administration itself, in a summary of the new law issued just three days after President Clinton signed it, appeared to understand the vital role states were being asked to play in developing standards and aligned assessments: "States will

anchor the [new Title I] program by developing challenging academic standards and linking Title I with their overall school reform efforts . . . ."[33]

Perhaps feeling the pressure of the demands by Republican governors to accommodate their tradition of "local control" of education,[34] the Department proffered a proposal for local standards as a draft regulation at the congressionally mandated negotiated rulemaking meetings held in early 1995. The Department proposed allowing states, in lieu of developing a single set of standards to apply uniformly to all school districts, to bundle together a collection of standards adopted by various school districts and label them the "state standards" for Title I purposes[35]—a proposal that generated considerable debate and rancor.

In the end, having failed to reach consensus on the matter at negotiated rulemaking, the Department simply repeated the statutory language (which does not include the Department's local alternative) in the proposed regulations. Although it had not changed its view of the law, the Department retained neutral statutory language in the final regulations as well. This compromise averted enshrining in the Code of Federal Regulations an objectionable interpretation of the statute, but did not resolve the controversy. Nor did these noninformative regulations provide much-needed guidance to states.

The issue surfaced once again as the Department prepared several drafts of nonregulatory policy guidance on Title I issues. Designed to provide detailed direction and suggestions to the states on the requirements of the new law and how to effectuate them, the guidance was to have been published and distributed to states by January 1996, in time to help them prepare their consolidated plans. However, the portions of the guidance addressing standards, assessments, and accountability—the core provisions of the statute—lagged behind the sections addressing other areas of the law. This important section underwent multiple revisions between March 1996 and March 1997, when it was finally promulgated.[36] Some of the delay can fairly be attributed to the pressure outside organizations put on the Department to maintain the integrity of key equity provisions in the law (such as uniform state standards and assessments). But the inability of various officials within the Department to come to agreement on the messages they wanted to deliver to a variety of audiences (including state and local officials and members of the opposing political party, as well as civil rights and advocacy organizations) also slowed down the process.

The final version of the guidance offers states three options, two of which contemplate local standards:

- **establish statewide content and performance standards**;
- **require school districts to establish their own standards, subject to state approval**; or
- **employ a combined state/local approach** under which states establish uniform statewide standards but permit local districts to establish additional standards which "meet or exceed" the state's, provided the districts somehow "align" and link their standards with the state's.[38]

Thus, the enduring message in both the final and earlier versions is that states are still free to adopt dual standards, thereby allowing districts with high proportions of poor and underachieving students to expect less of their students—a message that alarmed civil rights advocates, among others, who warned:

> *Although the idea of locally-designed standards and assessments may sound appealing, we have tried this route before—with alarming results. In the 1970s, many states decided that students would no longer be allowed to graduate from high school unless they had actually learned something. But they delegated responsibility to LEAs [local educational agencies] for deciding the set of proficiencies that would be necessary for high school graduation. The result: LEAs serving affluent communities established relatively high-level proficiencies; LEAs serving poor communities set theirs at rock bottom levels. And each got about what they expected.*[37]

In response to these concerns, Acting Deputy Secretary Marshall Smith countered:

> *Even if local educational agencies (LEAs) develop their own standards . . . the Department does not expect, nor does the guidance permit, LEAs to set lower expectations for some children. In fact, language has been included in the most recent draft of the guidance specifically stating that States are to ensure that content standards set at the district level meet or exceed State standards or criteria.*[38]

In any event, having permitted the local option, the U.S. Department of Education failed to ask states to declare whether districts set their own standards and, if so, how they planned to assure comparability of local standards with state standards. While the Department's own guidance admonished states not to permit districts with high concentrations of poor and low-achieving children to establish less challenging standards, states that allowed districts to develop their own local standards were not required to, and therefore usually did not, report their methods, if any, for certifying the comparability of local standards, in terms of both the subject matter covered and their rigor. "Local option" states include **Alaska**, **California**, **Colorado**, **Idaho** (at least during the transition period), **Ohio**, **Vermont**, **Virginia**, **Wisconsin**, and **Wyoming**. (**Arizona**, among others, uses a mixed approach: the Department unconditionally approved Arizona's plan to have statewide content standards but to let districts define their own Title I performance standards.[39]) Lacking a strategy to ascertain whether the high standards referred to in scores of state plans apply to all children, just to some children, or not at all, the Department was left not knowing the answer to this critical question.

The following examples highlight some of the difficulties with the Department's policy:

- **Alaska** is a state that not only allows, but actually encourages, local standards. The state circulates model state standards to guide local school districts, but their adoption by districts is voluntary. Districts may discard the models and start from scratch. As late as July 10, 1997, Alaska had still not devised a way to ensure that its local districts' standards equaled or exceeded the model state standards. In its own report reviewing federal education programs operating in the state, the Department noted at the outset: "The State must establish a process . . . to determine that LEAs set standards for themselves that meet or exceed [state standards] . . . ." But, in the portion of the report spelling out specific steps needed to correct Title I compliance problems (and giving the state 60 days to respond), the Department required no corrective action. Further, there is evidence that districts may not be taking seriously even the standards they claim to have adopted. In the same review, the Department found that the Matanuska-Susitna Borough school district, which purported to have adopted the state's standards, did not actually apply them. The curricula had not been aligned with state standards; "staff members produced desired outcomes that were not tied to the standards"; and there were no plans to align curricula and assessments to state standards.[40]

- **California** had no statewide standards in English and mathematics until December 1997. Until that time, each of the state's 1,052 school districts was left to develop its own standards and, even now, adoption of state standards is voluntary. Districts may choose to develop and use their own standards. While, in theory, local standards must be as rigorous as the state's, the reality often may be quite different.[41] For example, *The [Sacramento] Bee* reported that the absence of standards in Sacramento schools "translates into a subculture of partially grasped concepts and diminished expectations: first-grade teachers whose goal is for students to learn half the alphabet; third-grade teachers who give up trying to get students to memorize the multiplication tables, hand out cheat sheets and move on; fifth-grade teachers who read the social studies text aloud because the students can't understand it on their own; middle-school teachers who assign posters for projects because the student's can't write reports."[42]

- **Colorado** has developed "model" content standards in six subject areas "to ensure a consistent level of educational quality, and race and gender equity throughout the state," but each local district can define what its students should know and be able to do in content areas.[43] Whether standards for Denver students—more than 50% of whom are eligible for the federal free-lunch program, 20% are limited English proficient, and 70% are minorities[44]—were the same as for students in predominantly white and affluent districts was a question that the Department did not ask in the course of reviewing Colorado's plan. Nor has the Department collected or assessed information that may have a bearing on the standards actually being applied locally. In a classic case of the right hand not knowing what the left hand was doing, the Department did not take account of the fact that while its Title I office was reviewing Colorado's plan, its own Office for Civil Rights (OCR) was investigating Denver Public Schools for possible civil rights violations that were substantially related to Title I compliance. OCR ultimately found that the Denver Public Schools' bilingual program did not comply with Title VI of the Civil Rights Act of 1964 because, among other things, the district failed to identify limited English proficient students, used unqualified teachers, and did not follow up with students who had exited the bilingual program.[45] These findings were issued in final form by OCR shortly after the Department's Title I office gave the state a free pass for the remainder of the authorization period by removing conditions on its state plan.[46] OCR since has referred the matter to the U.S. Department of Justice because it had been unable to negotiate a compliance agreement with the district.[47]

- In its state plan, **Virginia** presented broad, generalized content standards, leading peer reviewers to question their workability: "Does Virginia have more detailed guidance concerning content standards that it will provide to LEAs? If there is no other guidance and each LEA is given the flexibility of defining for itself what each of these broad content standards means and at what grade levels it applies, how will Virginia align its assessment with what is being taught?" Virginia then clarified that standards are set at the state level, but they are optional for local districts, which have their own standards and can choose to conform them to state standards (or not). The state implied that alignment between classroom practice and the assessment was unnecessary, because the state assessment results would report how well students performed relative to the state standards.[48]

C. The State Plan Process

All states, except **Utah**, submitted consolidated state plans. In some ways, the consolidated state plan process made the states' job of preparing plans more difficult because, for the first time, they had to focus on aligning many programs under common themes. More importantly, this consolidated planning process often meant sacrificing a detailed explanation of how the states would satisfy Title I's specific requirements. Peer reviewers for Florida noted the challenge for states in this consolidated planning process: "While consolidated planning is meant to end separate and narrow categorical thinking when conducting school planning, it remains necessary for the State to provide adequate description of how schools will meet (with State support) the special needs of targeted populations."[49]

The Department approved all state plans by the statutory deadline (July 1, 1996). But it determined only five plans (the plans of **Arizona**, **Kansas**, **Minnesota**, **New York**, and **South Carolina**) could be fully approved as having met all statutory requirements. For the great majority of states, the Department found some deficiency in need of correction, with respect to Title I or other programs in the consolidated plan. Forty-one state plans therefore received "conditional" four-year approval, and were required to take corrective action that the Department would review and approve by March 15, 1997. Thirty-two states required removal of one or more conditions related to Title I issues. In the case of five states (**Alabama**, **Georgia**, **New Hampshire**, **South**

Dakota, and **Wyoming**), however, the Department found substantial deficiencies, and approved these plans for only one year (so money could continue to flow) while requiring the states to make substantial corrections or revisions to their plans.[50]

D. Approval of State Content Standards: "Don't Ask, Don't Tell"

Most states were able to meet the statutory deadline for establishing content standards in at least reading/language arts and mathematics by the beginning of the 1997-98 school year. As of January 1998, 43 states had content standards in mathematics and 42 states had content standards in English language arts. The remaining states either had no content standards or had not completed work on them.[51] By July 1998, three states, **Georgia**, **Idaho**, and **Iowa**, still were without a Department-approved process for developing content standards.[52]

While it was certainly good news that most states developed standards—the first building block in the new Title I accountability structure—the bad news was that in most cases, the Department had no idea whether these standards complied with the law. The Department was hampered by the fact that the statute prohibits the federal government from requiring states to submit their actual standards for review.[53] The Department did ask for comment on this matter, and eventually published (although too late to be useful to states in the preparation of their plans) guidance setting forth some criteria for acceptable evidence of challenging standards, in the absence of their submission:

> *To guide a State's submission of evidence of challenging content and [student performance] standards, the State could select from the following "menu" of options:*
> - *Comments from an independent peer review panel the State has requested to review its standards.*
> - *A detailed description of the process by which the State developed its standards and reviewed their rigor, including input from relevant stakeholders and individuals or organizations with expertise in standards development.*
> - *Evidence demonstrating that student performance on a State assessment that is aligned to the State content and performance standards is generally comparable to student performance on a rigorous nationally recognized assessment such as the National Assessment of Educational Progress (NAEP).*
> - *Evidence demonstrating that the State's standards are as challenging as standards promulgated at the national level (such as NCTM [National Council of Teachers of Mathematics] content standards).*
> - *Evidence describing the State's process to benchmark its standards to nationally recognized standards such as participation in the New Standards Project.*
> - *Adoption of the standards of another State that have been determined to be challenging.*
> - *Alternative evidence that demonstrates the State has challenging standards.*[54]

While some states included sample content standards and described their performance standards in their plans, as permitted by the statute, many did not. Moreover, there was little consistency in what states did include in their plans.

It was left to the peer reviewers to decide what kind of evidence of challenging and rigorous standards each state should be asked to submit with its plan. Exhibiting a reluctance to ask too many questions because of congressional opposition to anything that smacked of federal control of curriculum, the Department instructed reviewers to ask for the minimum necessary to satisfy Title I requirements. Nor did the Department ask states to provide the documentation suggested in the guidance to demonstrate that their standards were indeed "challenging." As a result, there was no serious assessment of whether state content standards met the requirements of the law.[55]

E. The Default on Performance Standards

Performance standards are a critical ingredient in state accountability systems. They spell out the levels of competence and proficiency that are expected in different subjects and in different grades. As the Senate report accompanying the Improving America's Schools Act notes, an important function of performance standards is to "provide a way for determining in clear and easily understood terms whether students are actually learning the subject material contained in the content standards."[56] Along with content standards in reading/language arts and mathematics, states were to have defined levels of proficiency, or student performance standards, in at least these two subjects by the start of the 1997-98 school year. The plans submitted to the Department in the spring of 1996 were to have indicated either that the state already had performance standards or that they would be developed within the same time frame as the content standards. Plan reviewers were instructed to verify this in each plan.[57]

What actually happened was much different. Often the requirement to include performance standards was simply overlooked in the process of reviewing plans. Many state plans that lacked the required description of performance standards were approved —even after reviewers noted the absence of standards! For example:

- Reviewers of the **District of Columbia**'s plan noted that it had "student performance standards in writing, but a plan for developing similar standards for any other curricular area was not found."[58]

- The peer review notes on **Louisiana**'s plan commented on "[t]he lack of definition of student performance standards and the lack of a strategy and approach for moving beyond content standards to student performance standards . . . ." An obviously knowledgeable reviewer wrote further about "the crucial role student performance standards play as the link between content standards and aligned assessments. Enhancements in this area are deemed essential in enabling this plan to hold promise for improving learning and promoting educational achievement for all children who benefit from the Federal programs included in this plan."[59]

The Department approved the plans of the District of Columbia and Louisiana *without performance standards*, or even the condition that they submit a strategy for developing performance standards.[60]

In some cases, the Department approved plans with clearly inadequate standards. For example:

- In its consolidated state plan, **New Mexico** outlined three levels of performance as required by Title I: "advanced," "proficient," and "partially proficient." But these levels were no more than cut-scores on the transitional assessment, a standardized test, proposed for the purpose of satisfying interim accountability requirements. For example, in grades three, five, and eight, students would be considered "partially proficient" even if they ranked as low as the 1st percentile on the reading comprehension and math portions of the Iowa Test of Basic Skills (ITBS), a norm-referenced test. (The state defined "partially proficient" as scores between the 1st and 39th percentiles).[61] Such a standard is not set at the high level called for under the law. Nor were these standards aligned with state content standards. Therefore, they did not constitute valid performance standards within the meaning of the law. But the Department approved New Mexico's state plan on July 1, 1996, and did not condition approval on correcting this defect.

In order to rectify the fact that many states had sent little or no evidence of their performance standards, in June 1997, nearly one year after it approved state plans, the Department sent identical letters to a majority of states asking if they had performance standards.[62] States responding in the affirmative were asked to submit evidence that performance standards had been developed. States answering in the negative were told to request a waiver by August

1, 1997, that would not exempt states from meeting the law's requirement, but rather would extend the deadline for developing performance standards in reading/language arts and mathematics.[63] Also in this letter, the Department finally laid out some clear requirements for performance standards (echoing those in the recently issued March 1997 *Guidance on Standards, Assessment and Accountability*), clarifying that:

- performance standards were to be aligned with the state's content standards; and
- performance standards must describe at least three levels of performance (advanced, proficient, and partially proficient).

In addition, the Department identified the type of evidence that would be sufficient to demonstrate the existence of challenging performance standards. The Department also admonished states that "cut scores on transitional assessments (e.g., percentiles on a norm-referenced test)" likely would not satisfy Title I's requirements "because transitional assessments are not normally aligned with a State's content standards."[64]

The Department employed four peer reviewers to examine the plans already approved and any new material submitted by the states. In the case of a plan that clearly documented that content and performance standards were developed or would be developed in at least mathematics and reading/language arts, the Department required nothing more. In other cases, the peer reviewers found that many previously approved plans did not have clear evidence that this requirement had been met. These states were then asked to submit evidence regarding the development and timetable for their performance standards.

Thereafter, the Department negotiated with states and in some cases granted further extensions. In addition, the Department offered to pay for consulting teams to visit and advise states on standards development. The Department recruited state officials and other experts, most of whom had hands-on experience in writing standards for their own states.[65]

By the end of October 1997 (the beginning of the 1997-98 school year), the Department's Standards and Assessments Team reported to the Acting Under Secretary that only 17 states had met the requirements for developing content and student performance standards under Title I: **Colorado**, **Connecticut**, **Illinois**, **Indiana**, **Kansas**, **Kentucky**, **Maine**, **Maryland**, **New Hampshire**, **North Carolina**, **Ohio**, **Oklahoma**, **Oregon**, **South Carolina**, **South Dakota**, **Texas**, and **Vermont**. By that date, the Department had requests for waivers of the standards' deadline from 19 states: **Alabama**, **Arkansas**, **Delaware**, **Georgia**, **Hawaii**, **Idaho**, **Iowa**, **Louisiana**, **Massachusetts**, **Minnesota**, **Missouri**, **Montana**, **Nebraska**, **Nevada**, **New Jersey**, **New Mexico**, **North Dakota**, **Rhode Island**, and **Wyoming**. The Department considered **California** a "special case" because it was awaiting State Board approval of its standards. The Department determined that 14 states and **Puerto Rico** needed to submit waiver requests because the peer review panel recommended that the states do additional work on their standards.[66]

More recently, as of July 20, 1998, the Department has approved 20 states' (the 17 named above, plus **Pennsylvania**, **Wisconsin**, and **Wyoming**) and **Puerto Rico**'s strategies and timetables for the development of performance standards. Thirty states plus the **District of Columbia** still were without an approved process for developing performance standards.[67] Despite the Citizens' Commission's requests, the Department has declined to provide the underlying documentation upon which these approvals were based.

Finally, even for those states that have developed performance standards, there is evidence suggesting those standards often were not the "high-level" standards demanded by Title I. For example:

- The Department approved **Alabama**'s plan for only one year, in part because of its inadequate standards. Alabama's plan proposed, as "a starting point," three performance levels based upon results from the Stanford Achievement Test, 9th edition: "Academic Alert" (partially proficient) when the majority of students score between per-

centiles 1 and 22; "Academic Caution" (proficient) when the majority of students score between the 1st and 39th percentiles; and "Academic Clear" (advanced) when the majority of students perform at or above the 40th percentile. Peer reviewers were not impressed by these standards: "the use of a single assessment instrument and the setting of the 40th percentile as advanced proficiency leads the reviewers to believe that the plan will encourage minimum standards rather than high standards."[68]

Endnotes

[1] Deborah Anderluh, "Special Report: Hard Lessons: Teaching the Poor," *The Bee* (Sacramento, CA), at 10 (series originally appeared in *The Bee* on Sep. 21-24, 1997).

[2] See the Education Trust, *Education Watch: The 1996 Education Trust State and National Data Books*, at 11 (Washington, D.C.: The Education Trust 1996).

[3] Anderluh, *supra* note 1, at 3.

[4] *Id.* at 2.

[5] Liz Bowie, "Pupils lose ground in city schools," *The Sun* (Baltimore, MD), Nov. 12, 1997, at 1A.

[6] See, e.g., the Education Trust, *supra* note 2, at 9.

[7] See the Improving America's Schools Act, Public Law No. 103-382, 108 Stat. 3518 (1994) (codified at 20 U.S.C.A. § 6301 *et seq.* (Supp. 1998)).

[8] Title I of the Elementary and Secondary Education Act (ESEA) § 1111(b)(1), 20 U.S.C.A. § 6311(b)(1) (Supp. 1998) ("Each State plan shall demonstrate that the State has developed or adopted challenging content standards and challenging student performance standards that will be used by the State, its local educational agencies, and its schools . . . .").

[9] See, e.g., ESEA § 1111(b)(1)(C), 20 U.S.C.A. § 6311(b)(1)(C) (Supp. 1998).

[10] U.S. Department of Education, *Guidance on Standards, Assessments, and Accountability*, at 5 (Mar. 1997) (hereinafter "*Standards Guidance*"). See also ESEA § 1001(d), 20 U.S.C.A. § 6301(d) (Supp. 1998) (noting Title I's purpose to "provide opportunities for children served to acquire the knowledge and skills contained in the challenging State content standards and to meet the challenging State performance standards developed for all children.").

[11] ESEA §§ 1111(b)(1)(C), 1111(b)(6), 20 U.S.C.A. §§ 6311(b)(1)(C), 6311(b)(6) (Supp. 1998); 34 C.F.R. § 200.1(b)(1)(ii) (1997).

[12] ESEA § 1111(b)(1), 20 U.S.C.A. § 6311(b)(1) (Supp. 1998).

[13] ESEA § 1111(b)(1)(D)(ii), 20 U.S.C.A. § 6311(b)(1)(D)(ii) (Supp. 1998).

[14] See ESEA § 1002(a), 20 U.S.C.A. § 6302(a) (Supp. 1998) (authorizing appropriation for fiscal year 1995 and "such sums as may be necessary for each of the four succeeding fiscal years."). Appropriations for each fiscal year become available on July 1st of that year. For example, funds for fiscal year 1996 (1995-96) were available on July 1, 1996. See U.S. Department of Education, *Questions and Answers on Certain Provisions of Title XIV of the Elementary and Secondary Education Act of 1965*, at 13 (undated). The Secretary chose to allow the submission of a "relatively simple preliminary plan" for 1995, permitting states an additional year to develop a final consolidated state plan. See 60 Federal Register 3305, 3306 (1995) (describing proposed criteria for consolidated state plans). Final state plans were due May 15, 1996, and the Secretary had to approve those plans by July 1st in order to release funds on that date for FY1996. See U.S. Department of Education, *Elementary and Secondary Education Act (ESEA) as amended by the Improving America's Schools Act of 1994 (IASA) Final Consolidated State Plans (Section 14302 of the ESEA)* (undated) (providing instructions and criteria for final consolidated state plans).

[15] ESEA § 14301 *et seq.*, 20 U.S.C.A. § 8851 *et seq.* (Supp. 1998).

[16] ESEA § 1601(b), 20 U.S.C.A. § 6511(b) (Supp. 1998).

[17] ESEA § 1602, 20 U.S.C.A. § 6512 (Supp. 1998).

[18] See, e.g., Jason DeParle, "House G.O.P. Would Replace Scores of Programs for The Poor," *The New York Times*, Dec. 9, 1994, at A1.

[19] See, e.g., H.R. Conference Report No. 103-761, at 578 (1994) ("if states have content or student performance standards developed under . . . Goals 2000 . . ., or some other process, those are the standards to be used in the Title I program"); H.R. Report No. 103-425, at 5 (1994) ("The state's initial plan could include only standards for mathematics and reading/language arts, if the state has not developed standards in other subject areas. These standards would be supplemented by standards in other subject areas as the state develops them."). See also S. Report No. 103-292, at 3 (1994).

[20] In an interesting early commentary on the law published in the summer of 1994, as the Administration's proposal for Title I was working its way through the legislative process, Secretary Richard Riley described how, in keeping with Goals 2000, Title I would be driven by the same high standards that all children are expected to meet. He wrote that states would be "required to include content and performance standards for elementary and secondary school children in those core subjects that it had adopted standards (which would have to include at least mathematics and reading/language art), *adding other standards as it adopted them in accordance with a schedule*." Richard W. Riley, "Redefining the Federal Role in Education: Toward a Framework for Higher Standards, Improved Schools, Broader Opportunities and New Responsibilities for All," 23 *Journal of Law & Education* 295, 333 (Summer 1994) (emphasis added).

[21] See Goals 2000: Educate America Act, Public Law No. 103-227, 108 Stat. 125 (1994) (codified at 20 U.S.C.A. § 5801 *et seq.* (Supp. 1998)).

[22] See U.S. Department of Education, *Draft Standards and Assessments Regulations, Final Draft, Negotiated Rulemaking* (Jan. 1, 1995) (unpublished); 60 Federal Register 21,399, 21,402, 21,410 (1995) (describing proposed 34 C.F.R. § 200.4(c)(1) and negotiated rulemaking discussion of that section).

[23] Janie E. Funkhouser and Katrina G. Laguarda, *Negotiated Rulemaking Session for Title I of the Elementary and Secondary Education Act as Amended: Summary of Issues and Interest Group Positions* (Feb. 10, 1995) (unpublished).

[24] Mark Pitsch, "New Title I Rules Focus on Standards and Assessment," *Education Week*, May 10, 1995, at 16.

[25] Letter from the Title I Reform Network to Mary Jean LeTendre, Director, Compensatory Education Programs, U.S. Department of Education (May 31, 1995). (The Title I Reform Network includes members of the Center for Law and Education, the Council of Chief State School Officers, the Education Trust, the Mexican American Legal Defense and Education Fund, and other advocates and legal experts.) See also Civil Rights Restoration Act of 1988, Public Law No. 100-259, 102 Stat. 28 (1988) (reversing Supreme Court decision in *Grove City College v. Bell*, 465 U.S. 555 (1984) which held that nondiscrimination provisions in Title IX and other civil rights laws applied only to subjects funded by federal programs under those acts).

[26] 60 Federal Register 34,799, 34,800 (1995) ("If a State has standards and assessments for all students in subjects beyond mathematics and reading/language arts, the regulations do not preclude a State from including, for accountability, additional subject areas, and the Secretary encourages them to do so.").

[27] Letter from the Title I Reform Network, *supra* note 25, at 6.

[28] State of Delaware Department of Public Instruction, *Ensuring Student Success: The Delaware Consolidated Plan for School Improvement*, at 7-12 (May 1996).

[29] Kansas State Board of Education, *Kansas One System for Educational Improvement: A Consolidated State Plan*, at 29-30 (Apr. 1996).

[30] See Virginia Board of Education, *Virginia's Consolidated State Application*, at 6, 13 (May 1996); Virginia Department of Education, *Supplementary Addendum to the Virginia Consolidated Plan in Response to the Summary of Fiscal/Regulatory Review*, at 1-2 (Mar. 12, 1997) (hereinafter "*Supplementary Addendum*"); Virginia Department of Education, *Amendments to Consolidated Plan*, at 1-2 (May 19, 1997).

[31] H.R. Conference Report No. 103-761, at 577-81 (1994); S. Report No. 103-292, at 2-4, 7, 9-10 (1994); H.R. Report No. 103-425, at 4-5 (1994).

[32] U.S. Department of Education, *The Improving America's Schools Act of 1994: Summary Sheets*, at 1 (Oct. 27, 1994).

[33] For example, Iowa Governor Terry Branstad rejected Goals 2000 money unless the terms were changed to accommodate their tradition of "local control" of education. See, e.g., Lynn Olson, "Standards: Standards Times 50," *Education Week*, Apr. 12, 1995 (noting Governor Branstad's threat to withdraw Iowa from the Goals 2000 program because, he says: "We really believe that standards-setting should be done locally. We object to the requirement that the state be mandated or forced by the federal government to do this.").

[34] U.S. Department of Education, *Draft Regulations, Sec. 200.__(a)(2)* (undated draft distributed to participants in negotiated rulemaking meetings, Jan. 1995).

[35] The Citizens' Commission obtained and reviewed drafts of the Department's *Guidance on Standards, Assessment and Accountability* dated March 15, 1996, September 16, 1996, October 1, 1996, and March 2, 1997. The final version was issued in mid-March 1997.

[36] U.S. Department of Education, *Standards Guidance*, *supra* note 10, at 17.

[37] Letter from the Title I Reform Network to Mary Jean LeTendre, Director, Compensatory Education Programs, U.S. Department of Education, at 3 (May 6, 1996) (regarding proposed *Guidance on Standards, Assessments, and Accountability*). See also letter from the Title I Reform Network to Marshall Smith, Under Secretary/Acting Deputy Secretary, U.S. Department of Education (Dec. 20, 1996).

[38] Letter from Marshall S. Smith, Acting Deputy Secretary, U.S. Department of Education, to Dianne Piché (Mar. 13, 1997) (responding to the Title I Reform Network's comments on draft guidance).

[39] Arizona Department of Education, *Final Consolidated State Plan*, at App. A (May 20, 1996).

[40] U.S. Department of Education, *Alaska Integrated Review Report*, at 2, 4, App. A (July 10, 1997). See also Alaska Department of Education, *Addendum to Alaska Consolidated State Plan*, at 1 (May 15, 1997).

[41] See California Department of Education, *Reaching Higher for Equity and Excellence: California's Standards-Based Accountability System*, <*http://www.cde.ca.gov/iasa/standards/#ruth*> (last updated Aug. 29, 1998; visited Sep. 2, 1998); Millicent Lawton, "Calif. Education Officials Approve Back-to-Basics Standards in Math," *Education Week*, Jan. 14, 1998.

[42] Anderluh, *supra* note 1, at 3.

[43] Colorado Department of Education, *Colorado Consolidated State Plan*, at 6-7 (May 15, 1996).

[44] Education Week, *Quality Counts '98: The Urban Challenge: Public Education in the 50 States*, at 115 (Jan. 8, 1998).

[45] See letter from Lillian Guiterrez, Director, Denver Office, U.S. Department of Education Office for Civil Rights, to Irv Moskowitz, Superintendent, Denver Public Schools (July 31, 1997) (detailing the Department's investigation and findings of violation).

[46] See letter from Gerald N. Tirozzi, Assistant Secretary, Office of Elementary and Secondary Education, U.S. Department of Education, to William T. Randall, Commissioner of Education, [Colorado] State Department of Education (July 1, 1996) (conditionally approving Colorado's consolidated state plan); letter from Gerald N. Tirozzi, Assistant Secretary, Office of Elementary and Secondary Education, U.S. Department of Education, to Richard A. Laughlin, Acting Commissioner of Education, Colorado Department of Education (Jun. 12, 1997) (removing conditions and approving Colorado plan for remainder of reauthorization period).

[47] See letter from Jamienne S. Studley, Acting General Counsel, U.S. Department of Education, to the Honorable Isabelle K. Pinzler, Acting Assistant Attorney General, Civil Rights Division, U.S. Department of Justice (Oct. 6, 1997).

[48] See U.S. Department of Education, *Summary of Peer Review Final Consolidated Application Under Improving America's Schools Act: Virginia* (undated); Virginia Department of Education, *Supplementary Addendum*, *supra* note 30, at 1-2.

[48] U.S. Department of Education, *Summary of [Florida] Peer Review Final Consolidated Application Under Improving America's Schools Act*, at 2 (undated).

[50] See U.S. Department of Education, *Office of Elementary and Secondary Education Approval of Consolidated State Plans 07/01/96*.

[51] Council for Basic Education, *Great Expectations? Defining and Assessing Rigor in State Standards for Mathematics and English Language Arts*, at 4 (Washington, D.C.: Council for Basic Education Jan. 1998).

[52] U.S. Department of Education, *Status Report on State Standards* (July 20, 1998) (hereinafter "*Standards Status Report*").

[53] ESEA § 1111(b)(1)(A), 20 U.S.C.A. § 6311(b)(1)(A) (Supp. 1998) ("a State shall not be required to submit such [content or student performance] standards to the Secretary.").

[54] U.S. Department of Education, *Standards Guidance*, *supra* note 10, at 16.

[55] A preliminary answer to the question of whether states are setting high expectations for student learning was provided by the Council for Basic Education in its 1998 report, *Great Expectations?* See *supra* note 51. The Council, a nonprofit organization based in Washington, D.C., developed an evaluation process by which it assessed the rigor of the content standards in mathematics and reading/language arts found in the states' standards documents. Of the 42 states with English language arts standards, the Council judged 7 states as having very rigorous standards, 21 as having rigorous standards, and 14 as having standards of very low rigor. Of the 43 states with mathematics standards that the Council could evaluate, 16 states had very rigorous standards, 24 had rigorous standards, and 3 states had less than rigorous standards. *Id.*

[56] S. Report No. 103-292, at 2 (1994).

[57] The reviewers' guide has a space for indicating whether the plan includes:

Evidence that demonstrates that

(A) the State has developed or adopted challenging content and student performance standards for all students in accordance with § 1111(b) of Title I; AND

(B) the State's procedure for setting the student performance levels applies recognized professional and technical knowledge . . . .

U.S. Department of Education, *Reviewer Guide for Peer Reviewers for Final Consolidated State Applications Under the Elementary and Secondary Education Act, Parts I-III and Summary Form*, at 5 (May 16, 1996).

[58] U.S. Department of Education, *Summary of Peer Review Final Consolidated Application Under Improving America's Schools Act: District of Columbia*, at 2 (undated).

[59] U.S. Department of Education, *Summary of Peer Review Final Consolidated Application Under Improving America's Schools Act: Louisiana*, at 1 (June 12, 1996).

[60] Letter from Gerald N. Tirozzi, Assistant Secretary, U.S. Department of Education, to Franklin L. Smith, District of Columbia Superintendent of Public Schools (July 1, 1996); letter from Gerald N. Tirozzi, Assistant Secretary, U.S. Department of Education, to Raymond G. Arveson, Louisiana Superintendent of Education (July 1, 1996) (letters conditionally approving state plans with some conditions unrelated to performance standards).

[61] New Mexico State Department of Education, *New Mexico Consolidated State Plan*, at 6 (May 15, 1996).

[62] See, e.g., letter from Gerald N. Tirozzi, Assistant Secretary, U.S. Department of Education, to the Honorable Gene Wilhoit, Director, General Education Division, Arkansas Department of Education (June 13, 1997).

[63] The Department has authority to grant such waivers under ESEA § 14401, 20 U.S.C.A. § 8881 (Supp. 1998). Waiver requests involving provisions other than those on standards are discussed in Chapter VII, Waivers.

[64] See, e.g., letter from Gerald N. Tirozzi, Assistant Secretary, U.S. Department of Education, to Alan D. Morgan, New Mexico Superintendent of Public Instruction (June 13, 1997).

[65] See David J. Hoff, "Department Offers Consulting Aid to Help States Meet Title I Dictate," *Education Week*, Jan. 14, 1998.

[66] Memorandum from Gerald N. Tirozzi, Assistant Secretary for Elementary and Secondary Education, U.S. Department of Education, to Marshall (Mike) Smith, Acting Under Secretary, re: Update on Title I Standards Requirement (Oct. 28, 1997).

[67] U.S. Department of Education, *Standards Status Report*, *supra* note 52.

[68] See letter from Ed Richardson, Alabama State Superintendent of Education, to Mary Jean LeTendre, U.S. Department of Education (June 6, 1997); Memorandum from Barry S. Blackwell, Federal Programs Supervisor, Alabama Department of Education, to Amos Goodfox (May 16, 1997); U.S. Department of Education, *Summary of Peer Review Final Consolidated Application Under Improving America's Schools Act: Alabama* (undated).

Chapter IV

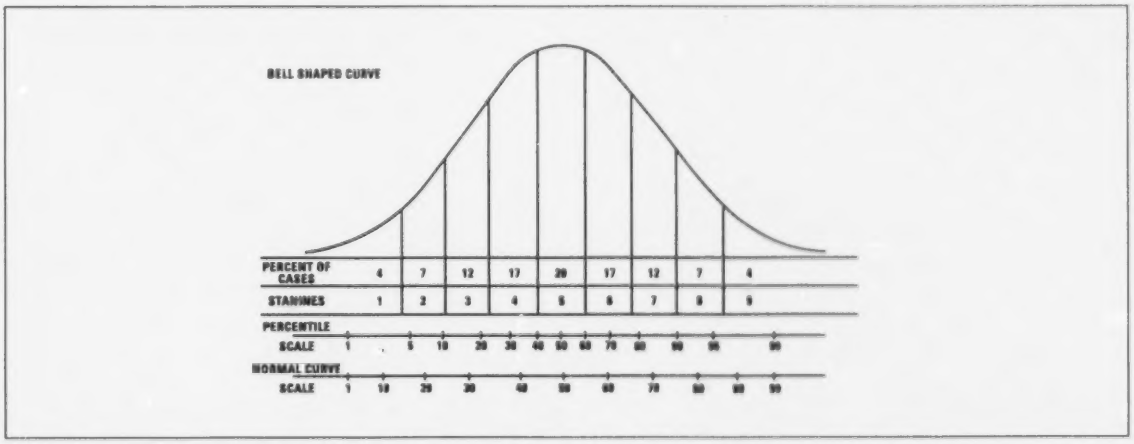
Assessments

I. The Need for Better Assessments in the Title I Program

Prior to 1994, norm-referenced, standardized tests of basic reading and math skills were widely used by school districts, among other purposes, to select children to participate in what was then known as the Chapter 1 program ("pre-tests") and to evaluate their progress at the end of the year ("post-tests").[1] In addition, these tests were called for by the U.S. Department of Education ("Department") in response to the congressional mandate for a national evaluation to measure overall program effectiveness.[2] In the years leading up to the 1994 reauthorization of Chapter 1/Title I, however, the Department itself, along with many advocates and educators, came to recognize the shortcomings of the tests themselves and the perverse impact Chapter 1 testing had on instruction.[3] These tests were criticized on grounds that:

- they provided only limited information on student attainment because they measured achievement of basic, not advanced, skills;
- the results were reported in ways that simply compared test-takers to each other, rather than on how much progress they had made in learning what they should know (see Figure 1); and
- the results were used, in effect, to reward schools that continued to fail to educate children because

Figure 1. Bell-Shaped Curve



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Chapter 1 school eligibility rules made low achievement a major factor in allocating funds.

Finally, there was vociferous criticism that these tests "dumbed down" instruction and stood in the way of high standards. For example, research commissioned by the Department itself for its National Assessment of the Chapter 1 program found:

> *[S]ubjects that are not regularly tested, such as science or geography, are often displaced from the curriculum by heavy doses of the subjects that are tested, such as reading and mathematics.... In addition to this narrowing of content, schools respond to testing by narrowing the range of skills that they teach.... Rather than teaching students how to structure and solve large, messy problems like those found in the real world, curriculum and instruction increasingly focus on tasks like those found on multiple choice tests.*[4]

Likewise, the Commission on Chapter 1, an independent commission created to recommend improvements in the Chapter 1 program, wrote:

> *[T]he current reliance on narrowly-constructed tests has invidious consequences, not only in Chapter 1 schools but throughout the educational system. These tests often stand in the way of more challenging teaching and learning because they emphasize discrete bits of knowledge and de-emphasize broader knowledge, especially that beyond reading and math. Studies of Chapter 1 instruction repeatedly have found that much of the time children could be focused on challenging content is spent, instead, on coaching for these narrow tests.*[5]

The new assessments called for by Title I are far different from what has previously been used to measure student learning. For one thing, the assessments will measure what a student knows against a standard that specifies what he or she is expected to know, rather than comparing one student against another on a bell-shaped curve. For another, the standards will themselves often call for students to demonstrate knowledge and skills needed to live and work in a much more complex society. Thus, the forms of these new assessments are expected to be rich and varied, relying not only on multiple-choice, "fill-in-the-bubble," items but incorporating student writing, constructed responses, portfolios, and other measures of students' ability to solve problems and demonstrate understanding of complex subject matter.[6] Finally, in a significant break from past practice, assessments will call for the inclusion of important core subjects beyond reading and mathematics, such as social studies and science. (See Figure 2 and Figure 3.)

These new forms of assessment are an essential element of the new law's theme of standards-based reform. Without an accurate means of measuring what students know and can do, responsible school authorities have no way of gauging whether students are reaching high standards. And without such an accurate gauge, schools and school districts cannot be held accountable for results. Accurate tools of assessment, then, are the glue that holds the reform effort together.

II. What the New Title I Requires: New Assessments Aligned with High Standards

The new Title I requires states, by the 2000-01 school year, to adopt and use new assessments aligned with the high academic standards the law also mandates (see Chapter III, Standards).[7] The main features of the new state assessment systems are described below.

A. Transitional Assessments

Although the law requires some alteration, it does not call for a radical makeover in Title I testing practices during the "transition" period, so as to free up state talent and resources to develop the final

Figure 2. The Maryland School Performance Program

Maryland's state assessment, the MSPAP, is a highly regarded statewide performance-based assessment. Maryland believes that performance-based instruction should be part of every child's daily classroom instruction. In a handbook distributed to parents across the state, the Maryland Department of Education explained how performance-based instruction and assessment is helping to transform classrooms:

The Maryland School Performance Program (MSPP)

Before MSPP	**After MSPP**
Students usually learned only what they were taught by the teacher in class.	Students are encouraged to be actively involved in their own learning—they are taught how to learn on their own, as well as how to learn from the teacher.
Teachers usually stressed individual work.	Students learn to work both alone and in groups.
Students usually used only one skill at a time. Math, English, Science, and other subjects were taught separately from one another.	Students learn to use many skills at the same time to solve complex tasks. Students are taught how to use the skills they learn in many different subjects to complete an activity.
Students learned how to solve simple multiple-choice or true-false problems that had only one right answer and were easy to grade.	Students learn how to solve problems that require critical thinking and may have more than one right answer. Grading these answers usually takes more time.
Students learned how to solve simple, specific problems that may have had little to do with the real-life situations they faced when they got out of school.	Students learn how to solve the kind of complex, real-life problems they will face when they start a career.

Tasks on the assessment mirror this type of instruction by asking students to:

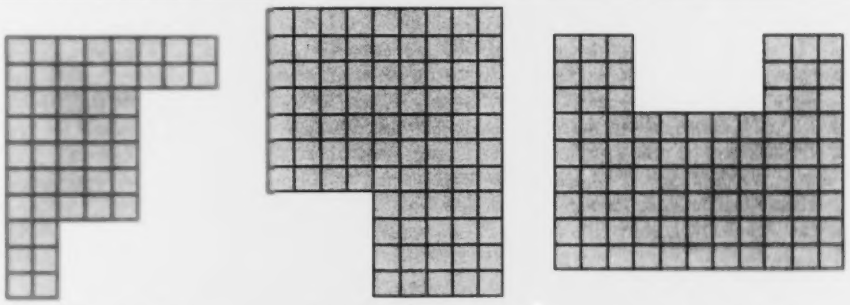
- Work alone and in groups to solve problems.
- Compare and contrast ideas, characters, and events.
- Develop a plan to solve a problem.
- Carry out the steps necessary to provide a solution.
- Figure out the answer.
- Explain how and why they got the answer they did.

Source: Maryland State Department of Education, *Parent Handbook for Better Schools*, at 9, 18 (undated).

Figure 3. Excerpt from a Grade 3 MSPAP Task

Mathematics: PLANNING A ZOO

Sample Activity:
Suppose that a new zoo is being planned for your community. Pretend that the zoo planners have asked your class to help with some of the planning. Below is the floor plan for three of the cages to be built at the new zoo.



Cage A: Giraffe **Cage B: Polar Bear** **Cage C: Elephant**

☐ = 1 square foot

Each animal's cage will need a fence enclosure. The cost of fencing is $8 for each foot. First, find the perimeter of each cage. Then, use your calculator to find the cost of the fencing for each cage. Record your answers on the chart provided.

Note: The task goes on to ask students to determine the area of the cages and the cost of flooring based on that area, and a set price per square foot of flooring. Students are also asked to place objects in the cages according to specific directions.

Sample Student Response:

Cage	Perimeter	Cost
A	36 ft	$288
B	40 ft	$320
C	46 ft	$368

Note: This response shows that the student understands the concept of perimeter and knows how to determine the perimeter of an object. It also shows that the student understands how to compute the total cost of an item—the fencing—based on how much it costs per foot. This student has demonstrated that he or she knows how to use money in real-life situations.

If students make a mistake in determining the perimeter, they will not get credit for that part of the answer. Students would still receive credit for computing the cost of the flooring if their answer was correct based on the answer they gave in the perimeter column.

Source: Maryland State Department of Education, *Parent Handbook for Better Schools*, at 20-21 (undated).

assessments. Under the new Title I, if a state does not already have assessments that meet the requirements of the law for final assessments, it may propose to use transitional assessments that "measure complex skills and challenging subject matter."[8] States are required to continue to test students for Title I accountability purposes during the "transition" period, while new assessments are being developed and piloted.

B. Final Assessments

The statute allows states until the 2000-01 school year to develop, test, and ultimately administer final assessments that are aligned with their standards and meet other legal requirements. A major reason states are given such a generous grace period is to enable them (a) to develop the high content and performance standards required by the law; (b) based on those standards, to make the necessary changes in their curricula; and (c) to develop and refine a much more advanced and sophisticated assessment system than that which most states currently have. Because these new assessments must be more "authentic," and measure higher levels of skills and knowledge than what was previously called for, many proponents of the new law envisioned states needing many years to write and pilot entirely new instruments, as opposed to purchasing tests "off the shelf" and making some relatively minor adjustments to meet the state's particular needs. (The latter course, though not what the law envisioned, is clearly less time-consuming and certainly can be accomplished in far less time than the transition period permits.)

In any case, however, the statute requires states "to develop benchmarks of progress" toward final assessment development, with periodic reports to the Department.[9] States that fail to develop assessments meeting the requirements of the law may ultimately be required to select and use a system that does, such as an assessment from another state that has already obtained the Secretary's approval.[10]

States' final assessments must meet the following requirements in order to comply with Title I:[11]

- **Alignment with State Standards.** Title I assessments must be aligned with the state's own content and performance standards. If a state already measures the performance of all students in reading, mathematics, or other subjects, it must use the same state assessments for Title I purposes.

- **Grade Levels Assessed.** The tests are to be administered at least once in grades three to five, grades six to eight, and grades nine to twelve. At this time, there is no requirement for an early-grade assessment prior to the third grade, even though Title I programs tend to serve the early elementary grades. However, the law does implicitly require the use of some measures to assess the performance of Title I schools with an early elementary grade structure (e.g., an early childhood magnet serving grades pre-K through two), in order to identify Title I schools in need of improvement.[12]

- **Individual Student Scores.** Tests must provide individual scores on the student performance standards, or reports of student progress.[13]

- **Inclusion of Limited English Proficient, Disabled, and Mobile Students.** The old Chapter 1 law was often applied to exclude from eligibility students whose educational deprivation stemmed from lack of English proficiency or disability. As a result, many schools never served limited English proficient (LEP) and disabled students in their Chapter 1 programs.[14] The 1994 amendments sought to correct this by providing that all students are eligible if they are failing, or considered most likely to fail, to meet the state standards.[15] The law itself provides no exemptions or excuses for children historically left out of assessment and accountability systems, i.e., limited English proficient, disabled, and mobile children. Recognizing that meaningful assessment and accountability for such children can pose significant technical and practical challenges for educators, Congress included several provisions to clarify how such children should be assessed.

- **Limited English proficient students** must be assessed "to the extent practicable, in the language and form most likely to yield accurate and reliable information about what such students know and can do, to determine such students' mastery of skills in subjects other than English."[16] Appropriate accommodations are also required. In some cases, this will mean testing students in their native language, particularly if they are taught in the native language. In other cases, such as when LEP students receive instruction in English, assessments in English may be more appropriate, especially if proper accommodations are provided. Such accommodations may include extra time, allowing the use of a dictionary, or providing simplified directions.[17] Title I places a duty on states to provide linguistically appropriate assessments, and if such assessments are not available, to "make every effort to develop such assessments . . . ."[18] The law permits states to seek assistance from the Department's Office of Bilingual Education and Minority Languages Affairs (OBEMLA), and requires OBEMLA to assist states in locating appropriate assessment measures in needed languages.

- The statute provides, without any stated exception, that **disabled students** must also be included in the assessments. The law requires "reasonable adaptations and accommodations" so that disabled students' achievement can be measured relative to state standards.[19] These accommodations may include extended time, modified presentation of the test (e.g., in Braille), clarified test directions, use of assistive devices, or a change in the setting of the test.[20]

- **Mobile students**—those who change schools during the school year—also must be included in Title I assessments if they remain in the school district. Their scores will not count in the accountability equation for any individual school they have attended, but will count for purposes of gauging the progress of the district as a whole.[21]

- **Disaggregation.** Test results must be disaggregated "by gender, by each major racial and ethnic group, by English proficiency status, by migrant status, by students with disabilities as compared to nondisabled students, and by economically disadvantaged students as compared to students who are not economically disadvantaged." States are charged with "enabling results to be disaggregated" within the state as a whole, within each school district, and within every school.[22]

- **Uses of Title I Assessments.** The new Title I assessments are intended to be used to hold schools and school districts accountable for results. While the law neither explicitly permits nor prohibits their use for other purposes (e.g., to guide instruction and to make educational decisions about individual students), assessments must be used for the purposes for which they are valid and reliable according to professional psychometric standards. Therefore, using the assessments as the sole, or even primary, criteria for high-stakes decisions for individuals (e.g., promotion or graduation) will be inappropriate in many cases, unless the test is validated for that purpose.

- **Local Assessments.** Title I does not preclude local school districts from using additional assessments, particularly in grades or subjects not included in the state assessment system. For example, if local school boards adopt standards in subjects not included in the state's standards (such as health education, tribal languages, or African American history), they may require local assessments to ascertain student mastery of those subjects. Local districts wishing to assess students for purposes other than accountability (e.g., to provide information to teachers and parents, for diagnostic purposes, and to aid in school improvement efforts) must describe any additional assessments in local educational agency (LEA)

plans to the state.[23] Such assessments may not, however, be used as a substitute for final statewide assessments, or to thwart the purposes of a statewide accountability system.

- **Criterion-Referenced Tests.** Title I also now requires that assessments "provide coherent information about student attainment" of state content and performance standards. In order to provide such information, states must use criterion-referenced tests, which measure student achievement relative to standards instead of (or in addition to) norm-referenced tests, which simply show how students perform relative to other students.

III. The U.S. Department of Education's Enforcement Record and State Compliance

In its instructions for preparing state plans, the Department directed states to provide descriptions of how they intended to address transitional and final assessments.[24] However, the Department failed to ask states to describe how they would comply with key provisions in the law's assessment section designed to assure inclusion of, and accountability for, the children most often left behind. More specifically, the Department:

- did not require states to spell out their plans for full inclusion of LEP and disabled students in the assessments, including their plans for appropriate modifications and accommodations; and

- did not require states to describe how they would provide for the disaggregation of assessment results by race, gender, poverty status, English proficiency status, and other categories spelled out in the law.[25]

Moreover, the Department did not provide sufficient direction to its peer reviewers and staff members charged with reviewing and recommending approval or disapproval of these plans. In other cases, the Department adopted erroneous interpretations of the law. As a result of all of these failures, along with a general reluctance to engage in controversy with states, many plans were approved without the Department even pointing out, much less requiring correction of, their legal deficiencies.

In the following subsections, we highlight these critical areas of enforcement, with discussion of both the Department's enforcement and compliance record as well as the content of states' plans.

A. Transitional Assessments

While states are required to employ assessments during the transitional period that measure "complex skills and challenging subject matter," few other requirements have attached to Title I transitional assessments. This is both because the law itself spells out very little in the way of requirements and because the Department was reluctant to go beyond the letter of the law or require these assessments to meet certain of the requirements of the final assessments. For example, the statute itself does not answer a number of important questions about transitional assessments, leaving it to the Department to interpret congressional intent and provide guidance to the states. Nor does the statute explicitly indicate whether all children should be tested, at what grades, or in what subjects. Moreover, the statute is silent on the question of whether interim assessments need to meet the technical properties required of final assessments (e.g., professional standards of validity and reliability, and disaggregation of test scores).

In response to questions like these, the Department's nonregulatory guidance attempted to provide some answers, although, as noted earlier (see Chapter III, Standards), the guidance was issued after state plans had been submitted. The Department's interpretation was that transitional assessments must:

- cover mathematics and reading/language arts, but not other subjects (even if the state has standards in, or currently tests, additional subjects);

- assess the performance of complex skills and challenging subject matter;
- be administered at some time during grades three to five, grades six to nine, and grades ten to twelve; and
- include all children in the grades assessed.[26]

But the Department fell short of requiring other important safeguards and protections, opining in the guidance that "transitional assessments do not need to meet the other assessment requirements of Title I that apply to final assessments."[27] These protections included recommendations by advocacy organizations that the Department require states to disaggregate transitional assessment data by poverty and LEP status:

> *The transitional period could well extend for the full five-year period of the reauthorization in a number of states. Without disaggregated data, there will be no accountability for the progress of the very children this Act was intended to benefit. . . . [T]he Act required that accountability systems be put into place immediately. There is no basis in the legislative history for believing that Congress intended to allow for schools and LEAs to escape responsibility while they are using transitional assessments. Such a construction of the law would lead to the anomalous result that schools and school districts in states which move more expeditiously in their assessment development would be held to higher performance standards than states that drag their feet. Moreover, disaggregating assessment results of assessments (where transitional or not) is a relatively simple matter, and something many states already are doing.*[28]

As a result of the Department's *laissez-faire* stance, Title I assessments during the transitional period often resemble those used under the old Chapter 1. The use of traditional, commercially published tests—the very tests the Congress sought to have replaced in the 1994 amendments—remains widespread today. Other, state-developed tests of a similar nature are also in use. These tests often measure only reading and math achievement, and not other important subjects such as science. They are comprised predominantly of multiple-choice questions, although increasingly they may also feature open-ended items and require students to write out or explain some of their answers.

Indeed, one advocacy organization that has studied the widespread use of such assessments in states recently found that in two-thirds of states, assessments were being used to "impede, rather than enhance, genuine education reform" in at least the following ways:

- "Rather than holding schools accountable for providing a rich, deep education and reporting on such achievement to the public, most state testing programs provide information on a too-limited range of student learning in each important subject area."
- "Rather than supporting and assessing complex and critical thinking and the ability to use knowledge in real-world situations, most state tests continue to focus too much on measuring rote learning."
- "Rather than making decisions about students based on multiple sources of evidence, too many statutes use a single test as a mandatory hurdle."[29]

It is true, as the Department has recognized, that there are certain advantages to these multiple-choice, machine-scored, norm-referenced tests.[30] For example, they are relatively inexpensive to administer and easy to score, and results can easily be disaggregated on a variety of bases. While they are not the best measures by any means of whether students are mastering "challenging skills and complex subject matter," they can expeditiously identify those schools that are failing to teach the most basic-level reading and math skills that these tests do measure. Thus, for the limited, short-term purpose of transitional

accountability, they can play a useful role while states work to develop more robust final assessments.

In practice, though the Department required states to describe their proposed transitional assessments in the state plans submitted, the Department accepted whatever test (or tests) that a state proposed to use, as long as the plan contained some description of the grades, subjects, and students that would be assessed. The Department felt itself in no position to judge whether the tests measured complex skills and challenging subject matter because it did not require states to submit a copy of the test or any sample of items (though as a practical matter, the tests most often mentioned in the plan are the widely available, commercially produced, multiple-choice, nationally norm-referenced tests of basic skills).

Whether the transitional assessments are adequate for identifying schools and districts where Title I students are not making academic progress remains the most important question. As noted, most traditional multiple-choice tests can serve this purpose, albeit with certain limitations. In circumstances where there are local tests from multiple jurisdictions, however, it is unlikely that there can be an equitable, standardized means of identifying schools and districts. Another problematic issue concerns the inclusion of LEP and disabled students in these assessments, a question on which the Department's guidance was conspicuously silent. Based on the Citizens' Commission's review of state plans, many states do not explicitly assure the Department they will include such students in transitional assessments.

However, some states have made strides toward meeting the statutory requirements for transitional assessments. For example, **New York**, as part of its transitional assessment, stated that it would test students in English and mathematics by using its highly regarded Regents Examinations. These demanding exams include short and extended constructed-response items, and essays, as well as multiple-choice. Further, districts are required to assess LEP students and to report their achievement; the state reports student scores disaggregated by English proficiency status, among other categories.[31]

B. The Local Option—Part II

As with content standards, the Department departed from the text and aims of the law and acquiesced to demands from certain states that they be permitted to rely on a patchwork quilt of local assessments rather than strong statewide measures of student achievement. During the negotiated rulemaking process, just as it had done with respect to standards (see Chapter III, Standards), the Department circulated to the negotiators draft regulations permitting a local option.[32] Even members of the group who had acquiesced to the notion of local standards balked at the notion of myriad districts within states each developing and administering their own assessments. One member noted how permitting the local option could lead to a "hodgepodge" of assessment results, many of which would be unreliable.[33] As a result, the Department backed off, and the recommended regulatory language that emerged, like standards, merely used language from the statute.

The following spring, the Department issued draft and final regulations in the same vein and deflected the controversy once again. But to a wide range of the education establishment—school administrators, teachers, school district and state officials—the position of the Department, here described by the Assistant Secretary and a top aide to the Under Secretary, was already clear: "States also can approve the use of district-adopted standards and aligned assessments for Title I purposes—but only if those standards and assessments are at least as challenging as the state's and meet the other requirements of the law."[34]

As many anticipated, the Department revived the issue when it came time to issue detailed guidance to the states. In drafts of the guidance circulated outside the Department to lobbyists and others, the Department attempted to reinterpret the 1994 law and its own final regulations issued on July 3, 1995. In its March 1996 draft guidance, in answer to its own question, "[m]ust State assessments used for Title I be uniform statewide?" the Department implicitly answered no:

Title I requires that participating States develop and implement State assessments that are aligned with the State's content standards. If a State has uniform statewide standards, it would, in most cases, develop a set of assessments aligned to those standards. However, there is nothing to preclude States from allowing LEAs to develop and use assessments that are aligned with the State standards. If, instead, a State approves standards that are developed by [LEAs], such LEAs would be able to use assessments approved by the State as aligned to their standards, as long as the assessments meet the other requirements for assessment in Title I.[36]

Although the guidance pertaining to standards, assessments, and accountability was not issued in final form until nine months after the Department had approved states' plans, several drafts had been released and circulated to lobbyists and state officials as the plans were being prepared. Because these drafts permitted a local option in various incarnations, with few or no safeguards, they signaled to the states that they were free to use any combination of state and local testing. Moreover, at various meetings with state officials, federal officials let it be known that the Department would not enforce the letter and spirit of the law. In so doing, the Department acted to accommodate demands on the part of some states to honor "local control" and the wishes of some school systems that wanted to keep using their own tests, all to the detriment of poor and minority children across the country.

Finally, in March 1997, the final *Guidance on Standards, Assessments, and Accountability* was issued, in which states were given the following options:

- Adopt **uniform statewide assessments**, which would become the only basis for defining adequate yearly progress.

- Adopt a **mixed state and local assessment system**, under which states could decide how much weight to accord state and local assessment results in defining adequate yearly progress. States could also exempt individual school districts from participating in state assessments and allow them instead to use their own assessments if the state determined those local assessments met state standards.

- Adopt a **system of purely local assessments**, allowing districts complete latitude to set their own standards and develop their own assessments, provided that the state had criteria against which the local measures could be evaluated.[37]

The Department's decision not to require statewide assessments in the Title I program provoked strong reaction from civil rights and other advocates, some of whom wrote repeatedly to Department officials to press the point that a policy that allows local school districts the latitude to use their own tests is likely to perpetuate a dual education system, in which lower standards persist in high-poverty, high-minority school districts—the very outcome the new law sought to avoid.[38]

Experts in the field of assessment and measurement agreed with the assertion that aligning or assuring the comparability of different assessments is virtually impossible, as a technical matter. The National Research Council's Board on Testing and Assessment concluded after study of the issue:

Currently administered state and commercial achievement tests and NAEP [National Assessment of Educational Progress] vary significantly in terms of their content emphasis, types and difficulty of test questions, and the thought processes they require of students. In addition, these tests vary substantially in how and when they are administered, whether all students respond to the same set of questions, how closely the tests are related to what is taught in school, how they are scored, and how the scores are reported and used....

Therefore, the committee concludes that:

Comparing the full array of currently administered commercial and state achieve-

ment tests to one another, through the development of a single equivalency or linking scale, is not feasible.[39]

A comparison of the state plans actually submitted to the Department reveals the serious implications of the Department's retreat on this issue. At the time the law was enacted, a number of states, including **Indiana**, **Kentucky**, **Maryland**, and **Texas**, already had made significant progress toward developing statewide assessment programs, usually based on criterion-referenced tests (CRTs). While experts will differ on how well these assessments measure content (e.g., some have criticized certain state CRTs for an overreliance on multiple-choice items), they share a common key feature contemplated by the new law: uniformity across the state. So whether they attend school in Fort Wayne or South Bend, in Lexington or Frankfurt, in Baltimore or Chevy Chase, in San Antonio or Alamo Heights, students in states like Indiana, Kentucky, Maryland, and Texas will have been assessed on the same content within each state. Thus, the performance of schools and districts can be compared both to each other as well as to uniform state standards for performance.

The following examples from state plans approved by the Department illustrate mixed state and local assessment systems. These plans do not appear to comply with the law, in part because they dilute uniform standards and make interdistrict comparisons difficult, if not meaningless.

- In **Colorado**, every school with grades four, eight, or eleven will participate in the state assessment program at least once every three years. Local assessments related to district standards will also be administered in these same grades by the year 2000. To ensure the comparability of achievement across the state, districts must compare their assessment results with those from the state assessment in the schools in the state sample. (The state sample may not be the same every year because each school needs to participate in the state testing program only once every three years.)[39] While this method provides some safeguards with respect to locally developed standards, it still allows for dilution of uniform state standards and could complicate the identification of schools and districts failing to make adequate yearly progress. (For more information on Colorado, see Chapter V, Accountability.)

- While **Indiana** has had a statewide assessment since 1987, it has been limited to math and reading/language arts. Although the state has also had standards in other subjects since the mid-1980s, it has chosen not to have statewide assessments in these subjects, leaving to local school districts the option of whether to test in these subjects and, if so, what assessments to use.[40]

- **Maine** claims to have "a strong tradition of local control of public education." In its state plan, this tradition of local control translated into a provision that districts and Title I schools may use alternative assessments (chosen from a list of allowable assessment types) in addition to the Maine Educational Assessment. Scores on both the state and local assessments are combined in the statewide accountability index, with the local test weighted at 40% and the state test results weighted at 60%. This option, however, undermines any efforts for interdistrict comparisons.[41]

- The **Missouri** plan, for example, stated that it would continue to administer its statewide assessment, the criterion-referenced Missouri Mastery Achievement Test (MMAT), as its transitional assessment while developing and phasing in its new mandatory state test, the Missouri Assessment Program (MAP). The MMAT, however, was not a mandatory assessment during the transitional period. Although most districts used the MMAT, they were permitted to use any criterion-referenced achievement test approved by the Missouri Department of Elementary and Secondary Education.[42]

- **New Mexico**'s plan outlined a transitional assessment system which would include statewide tests,

but which also would allow LEAs to override state assessment results with their "additional high-quality assessments" for accountability purposes. This suggests that when a district does not like the results on the state assessment, it can turn to the results on a locally administered test. Peer reviewers expressed considerable concern about the local override option, noting that there "[s]eems to be an assumption that locals will effectively self assess. Really concerned about local controls." They maintained that the "[p]roposed override of local assessments [is] not acceptable unless more is known about the local assessment . . . and the information provided makes it clear that the override [is] acceptable." Nonetheless, the Department removed the conditions on New Mexico's plan, with the local override option intact, after New Mexico clarified that districts would have to submit to the state department of education "a written explanation of the additional assessment and it is determined that such assessment has sufficient objectivity and validity to indicate that the results show adequate progress was made."[43]

The following examples from state plans approved by the Department illustrate state systems consisting of purely local assessments, at least during the transition period. These assessment systems quite clearly do not comply with the law:

- During the transition period, the state of **California**, with the Department's approval, permitted each of its 1,052 separate school districts to administer the assessment of its choosing. Under this system (which was revamped in the 1997-98 school year), there were no statewide performance standards and meaningful comparisons between districts were impossible.[44] California since has designated the Stanford Achievement Test, ninth edition (SAT-9), as its statewide assessment. Testing using the SAT-9 began in the 1997-98 school year.[45] (For further discussion of California's LEA-based accountability measures, see Chapter V, Accountability.)

- **Iowa** does not have a mandatory state assessment system. However, most of Iowa's school districts voluntarily select one of two tests: the Iowa Tests of Basic Skills or the Iowa Tests of Educational Development.[46]

- **Montana** allows each school district to select one of three norm-referenced tests approved by the state Office of Public Instruction. State plan documents do not reveal any plan for adopting a uniform, statewide assessment.[47]

- **Wyoming**'s plan proposed not only local standards that would be benchmarked against state model standards, but also local assessments. The state would permit local assessments during both the transitional and the final period. There would be a statewide assessment in the final period only, in math, reading, and writing for grades four, eight, and eleven. The Department's own review team recognized the difficulty in relying on local assessments and wrote to the state superintendent: "Since each district is developing its standards and assessments, Wyoming has had some unique challenges in creating a transitional assessment plan and accountability system that is comparable across districts."[48]

Some states, however, are realizing the advantages of statewide assessments which comply with Title I requirements:

- **Nebraska** recently modified its long tradition of local control by enacting legislation which would provide for a statewide assessment of student performance instead of the 656 school districts each choosing their own norm-referenced tests to measure achievement, as the state plan provided. As the superintendent of the Omaha school system noted, "for the first time, schools here [will] be on the same page, knowing what they're spending and what they're achieving." The Executive Director of the Nebraska Council of School Administrators was similarly pleased

with the legislation when it was proposed, stating it would be "a giant step for Nebraska. As Nebraska implements standards, this accountability system will be a major way of determining if schools are helping students acquire the skills and knowledge they need."[49]

C. Alignment with Standards

The amended Title I contemplated an integrated system in which standards would be aligned with assessments. State plans did not always realize this goal. Nor did the Department require states to remedy deficiencies in plans to align standards and assessments.

- For example, the **District of Columbia** (which currently administers the SAT-9, a commercially published norm-referenced test) submitted a plan which contained the vague assurance that "[u]ltimately, [it] will have a comprehensive student assessment system that is aligned with the performance-based curriculum frameworks and includes alternative assessments such as portfolios and student projects." Peer reviewers noted, however, that

  The District has not described a plan for adopting assessments that are clearly aligned with the District's content standards. The plan discusses the adoption of norm-referenced tests, but does not describe any process for ensuring alignment with the content standards. If the content standards are not aligned with the assessments, teachers may teach one concept and students be assessed on something completely different.

  The reviewers further noted that adoption of assessments aligned with standards is a complex process and indicated that the District should specify to the Department the steps it planned to take and its timeline for implementation. Yet the Department did not require alignment, or even a strategy or timeline for aligning standards and assessments, as a condition of plan approval. Instead, it just noted the issue of alignment as a "concern" when reviewing revisions to the District's plan.[50]

Alignment with content standards is an issue that will warrant serious public attention, as more and more states and local districts adopt commercially produced tests, claiming that they are well-matched to state standards. **Alabama** and **California**, for example, are employing the SAT-9 on a statewide basis. Alabama claimed in its plan that its committee of local educators, policymakers, and technical advisors selected the test in part because it matched the state "courses of study" (content standards). While Alabama has made some progress by adopting a uniform assessment and accountability measures, it is far from clear how and whether the SAT-9 is aligned to state standards.[51]

D. Limited English Proficient Students

Organizations and advocates representing limited English proficient students were actively engaged in this latest reauthorization of Chapter 1. For example, the Mexican American Legal Defense and Educational Fund, at the behest of members of the Congressional Hispanic Caucus, crafted a series of legislative recommendations that supported standards-based reform and paid particular attention to the need for the program to better serve LEP students. In addition, a number of policy options to improve federal education programs serving LEP students (including the former Chapter 1 program) were presented and analyzed by a group of scholars and advocates convened by Stanford University.[52]

Many of these recommendations made their way into the law that was ultimately enacted. Significantly, the new protections for LEP children in the law now include:

- in response to allegations that LEP students were excluded from Title I programs in some places, a provision, for the first time, that LEP students are eligible for Title I services on the same basis as other children, and,

- in order to assure that newly eligible LEP children's needs are met, a provision explicitly requiring that schools and school districts be held accountable for the adequate yearly progress of such children.

The key to ensuring the vitality of these provisions is the assessment system. Assessments must be available to measure the effectiveness of instruction provided to LEP children relative to state standards. Inclusion of LEP children in assessments is also necessary in order to hold districts and schools accountable for their academic progress.

The Department's guidance with respect to the assessment of LEP students, while not fully addressing all the complexities of the issue, provides some useful assistance to recipients. For example, the guidance contains clear statements that (a) LEP students must be expected to meet the same content and performance standards as other students; (b) results of final assessments must be disaggregated by LEP status; and (c) standards, curriculum, and assessments should be culturally inclusive.[52]

But the Department's guidance mysteriously stops short of an affirmative statement regarding the unambiguous legal requirement that LEP children must be assessed in content areas other than English. The Department further failed to explicate fully the requirement that LEP students must be assessed, "to the extent practicable, in the language and form most likely to yield accurate and reliable information" about their knowledge and skills with respect to subjects other than English.[54]

Regrettably, the Department did not make inclusion of LEP students an important criterion in approving state plans. In its instructions on preparing consolidated state plans, the Department had only one provision specifically addressing the assessment of LEP children:

> *Each State plan must identify the languages other than English spoken by the participating student population, indicate the languages for which yearly student assessments are not available and are needed, and develop a timetable for progress towards the development of those assessments.*[55]

Instead, the following is typical of the types of broad questions the Department asked:

> *What are the goals for student achievement of all children in the State? How do these goals address the educational needs of children who benefit from the federal programs included in this plan—in particular, those who attend high-poverty schools, and migrant, neglected or delinquent, homeless, limited English proficient, and other groups of children in your State whom the programs serve?*[56]

The Citizens' Commission's review of state plans approved by the Department revealed that most states did not come close to meeting the statutory requirements for inclusion of LEP students, with appropriate accommodations, in proposed assessment systems. The following examples highlight some of these deficiencies:

- An astonishing number of state plans obtained by the Commission were silent on the subject of LEP students' inclusion in assessments, including **Alabama**, **Colorado**, **Florida**, **Hawaii**, **Kansas**, **Maryland**, **Michigan**, **Missouri**, **Montana**, **Nebraska**, **North Carolina**, **Ohio**, **Oregon**, **Pennsylvania**, **Washington**, **West Virginia**, **Wisconsin**, and **Wyoming**.

- Most other states described or at least mentioned a state policy on LEP inclusion, including the states of **Arizona**, **Arkansas**, **California**, **Connecticut**, **Delaware**, **Georgia**, **Idaho**, **Illinois**, **Kentucky**, **Louisiana**, **Maine**, **Massachusetts**, **Minnesota**, **Mississippi**, **Nevada**, **New Hampshire**, **New Jersey**, **New Mexico**, **New York**, **North Dakota**, **Oklahoma**, **Rhode Island**, **South Dakota**, **Tennessee**, **Texas**, **Utah**, and **Vermont**, as well as the **District of Columbia**. But the vast majority of these states failed to indicate how they would comply with Title I's requirements for inclu-

sion of LEP students, appropriate accommodations, and native language assessments.

- Some states, like **California**, **Indiana**, **Minnesota**, and **South Carolina**, said in their plans that they would leave decisions about whether or how to include LEP students to local school districts, leaving virtually no safeguards against unwarranted exclusion of LEP children from the Title I accountability system.

Additional examples of deficient state plans include:

- **Virginia**'s state plan contained no description of how (or whether) LEP students would be included in Title I assessments, whether they would be tested in their native languages, or whether students would receive testing accommodations, where appropriate. Apparently recognizing these deficiencies, the peer review panel asked for detail on the last two issues. However, by the time the state received these comments, the Department already had approved the state plan without conditioning approval on curing these deficiencies. And when the state submitted plan amendments, it informed the Department that

> *No process has been established by the state to identify languages other than English that may be spoken by students, regardless of the programs under which they may be served (e.g., Title I, Part A). Local school divisions, however, bear the responsibility of putting into practice the processes and procedures necessary to enable effective communication both in the provision of academic and educational services to students, and between the schools and parents.*
>
> *Based on the Virginia Constitutional provision that English is the language of the Commonwealth, it has been the consistent direction of the Board of Education that assessments will be provided in English only. The Assessment Policy Advisory Committee has recently reviewed the current policies related to LEP students and the new assessment program. The draft of their findings is not complete nor has it been approved at this time.*

Although an undated Department staff memo indicated a "major concern" with Virginia's position on LEP assessment, no enforcement action was recommended, or taken, to the knowledge of the Citizens' Commission.[57]

- In response to questioning by the Department on a number of educational equity issues, the **Indiana** Department of Education reported that while its total school enrollment had declined by 6%, the number of LEP and language minority students in the state had increased by 78% in 8 years. Despite this growing LEP population, Indiana submitted a plan which did not comply with the new Title I law by providing for full inclusion in assessments, accommodations, and native language assessments, where appropriate. Instead, the plan said that the state would allow LEAs to exempt LEP and disabled students from participation in the state assessment, "based on their proficiency with the language and/or their Individual Education Plan." The plan went on to say that when LEAs and schools develop standards and assessments for LEP students, they "are assisted in developing tools that are appropriate for these students," and provided that "alternative assessments that are performance based are to be tied to the same content standards as the mainstream." The Department approved Indiana's plan without any conditions related to LEP or disabled students' assessment.[58]

- In the case of **Nebraska**, for example, the state acknowledged that, in 1994-95, 60 languages other than English were spoken by its 4,317 LEP students (an enrollment that had more than doubled in a 5-year period), and that standardized tests in these languages were not available. But the state's plan gave no indication of how or whether Nebraska planned to determine if such students were

meeting state standards. For example, would the students be exempt from Title I assessments? Would they be provided with accommodations? The plan did not say, merely informing the Department that when final statewide assessments were developed, they "should include versions in other languages, particularly Spanish and Vietnamese."[59]

Moreover, a number of states expressly declined to meet the law's requirement to assess LEP students "to the extent practicable, in the language and form most likely to yield accurate and reliable information on what such students know and can do."[60] For example:

- In its state plan, **Arkansas** flatly declined to adopt assessments in any language other than English.[61]

- Noting that 100 languages were spoken by its students, **Connecticut**'s state plan maintained that it was "not feasible to develop assessments in languages other than English" and exempted English language learners enrolled in bilingual or English as a Second Language (ESL) classes for less than three years.[62]

- A number of states exclude LEP students from assessments in subjects other than English for a number of years, although the law does not expressly permit them to do so. **Illinois** is one of these states. Illinois's plan provided that it would exclude LEP students for up to three years from the IGAP, the state assessment, while they attended bilingual classes. During this time, the state planned to assess such children in English proficiency, but in no other subject (although presumably the children would be taught more than just English). The state plan explicitly admitted that Illinois "will not be translating tests into other languages" for its large LEP population, and conceded that until such children were deemed ready to take the English-only IGAP, "there will be no data about mathematics ability."[63]

- Many states, including some with large numbers of LEP students, expressed no intent to institute statewide assessments in languages other than English. Peer reviewers of **New Mexico**'s plan, for example, noted as a plan weakness that there was "[n]o mention of non-English tests except in [discussion on optional] local assessment .... This is a serious concern given the demographics of New Mexico."[64]

One notable exception to this general trend of not testing students in their native languages is the following:

- **Alaska** has adopted a state policy that provides that all but those with the most limited proficiency in English are required to participate in its state assessment program. The result has been that less than 1% of LEP students in Alaska are excluded. In addition, the state provides lists of accommodations for both disabled and LEP students.[65]

Further:

- Unlike many of their compatriots, several state plans at least *said* that they would develop or use native language assessments. These states included **Alaska**, **Arizona**, **California**, **Delaware**, **Louisiana**, **Nevada**, **New Jersey**, **New York**, **North Dakota**, **Oregon**, **Rhode Island**, **South Dakota**, and **Texas**. However, in many cases even these plans were inadequate. For example, a number of states, including **California**, placed the burden on local districts to develop or procure suitable native language assessments. Further, more than two years after states submitted these plans, many states still have not developed native language assessments.

Assessment of LEP children in **California** may be particularly problematic since passage of Proposition 227 (the "Unz Initiative"). This law was intended to eliminate bilingual education, allowing only a one-year transition for English language learners. Although the law does not mandate that assessments be in English only,[66] it is unclear how well LEP stu-

dents will fare even on native language assessments if they have not understood what they have been taught in English. It is also unclear how California will address these concerns, as well as its obligation under federal civil rights law to provide students who do not speak English "a meaningful opportunity to participate in the educational program."[67]

E. Inclusion of Disabled Students in State Assessments

A number of experts have observed that as stakes (for adults) of large-scale assessment results are increased, the numbers of disabled and other harder-to-teach students who are included in such assessments may decrease. Both Title I and the recently reauthorized Individuals with Disabilities Education Act (IDEA)[68] address this problem.

1. Title I

Like LEP students, students with disabilities who attend Title I schools must be considered eligible for Title I services on the same basis as any other students, and be included in Title I assessments. The Department's guidance with respect to such students made clear that:

- disabled students must be included in Title I assessments because they are expected to meet the same high standards as other students;
- "appropriate accommodations" must be provided to disabled students "when necessary to enable [their] participation in the assessments"; and
- only the small number of children whose severe "physical or cognitive limitations prevent[ ] them from participating meaningfully in exactly the same assessments as other students, even with . . . appropriate accommodations," may be exempted from Title I assessments, but even those children's "educational progress" should be measured through "appropriate" alternative measures.[69]

2. IDEA

Subsequent to the enactment of the new Title I and the Department's approval of state plans, Congress reauthorized the IDEA, the major federal law providing for the education of disabled children. Like Title I, the IDEA requires children with disabilities to be included in general state and districtwide assessment programs but, unlike Title I, it specifically allows the use of alternate assessments for those children who cannot participate in the general testing program.[70] Results of regular and alternate assessments must be reported, using disaggregated data.[71] The IDEA also now requires that a student's Individual Education Plan (IEP) contain a statement of any modification that student needs in order to participate in a state or local assessment and, if the IEP team decides that the child should not take the state or local test, it must provide a statement as to why that particular assessment is inappropriate and how the child will be assessed.[72]

Consistent with the reauthorized IDEA, a widely used approach in many state plans was to delegate to each student's IEP team the responsibility of determining whether the student would participate in a particular assessment and whether the student required any special accommodations. Although this approach may be consistent with the revised IDEA which recognizes that some children "cannot participate in State and district-wide assessment programs,"[73] only time will tell whether the approach is sound.

It is unlikely that, without significant state and federal oversight, schools will on their own change their historic patterns of excluding disabled and other harder-to-teach children from high-stakes assessments.[74] Both the federal and state governments have a duty to issue strong regulations and guidelines instructing IEP teams to exclude children from assessments only in extremely limited circumstances, such as those provided by the Department in its Title I guidance, but as of December 1998, the Department had not yet issued its own IDEA regulations. In addition, aggressive federal and state monitoring is needed to ensure proper inclusion and accommodations are being provided. But states did not report whether

they had issued stringent inclusion directives to districts and schools, leaving the Department without the benefit of this critical information.[75]

3. The State Plans

The Citizens' Commission's review of state plans with respect to inclusion of disabled students revealed that:

- Many state plans made no mention of a policy for including disabled students in state assessments. At best, they noted that accommodations would be provided. These included states like **Colorado**, **Hawaii**, **Louisiana**, **Michigan**, **Mississippi**, **Missouri**, **Montana**, **New Mexico**, **North Carolina**, **North Dakota**, **Oregon**, **Pennsylvania**, **Rhode Island**, **South Carolina**, **Virginia**, **Washington**, **West Virginia**, **Wisconsin**, and **Wyoming**, as well as **Puerto Rico**.

- In states whose plans did provide for inclusion, the inclusion policy was often vague or unclear. For example, state plans frequently were vague about whether inclusion provisions applied to transitional assessments, final assessments, or both. They omitted criteria for excluding students with disabilities. Or they neglected to describe what accommodations, if any, they would provide. States in this category include **Arizona**, **California**, **Connecticut**, **Delaware**, **Idaho**, **Indiana**, **Kansas**, **Maine**, **Massachusetts**, **Nevada**, **New Hampshire**, **Ohio**, **Oklahoma**, **South Dakota**, **Tennessee**, **Utah**, and **Vermont**.

- Among the plans reviewed, **Maine**'s ranked among the better plans in terms of the clarity of the language on inclusion: "Provision is made for modification to accommodate any special needs of students .... Any modifications or exclusions must be decided upon by a team of educators and include input by the parent(s) of the child. .... [E]xclusion is viewed as a last resort." The state reported that in 1995, for example, 50% of eighth graders with disabilities took all of the Maine Educational Assessment, and another 30% took parts of it.[76]

When state plans are silent, or unclear, school districts often must take up the slack. The School District of Philadelphia has created its own "Accommodations Form" to track accommodations for special education and LEP students taking the Stanford Achievement Test (Figure 4). The form also advises: "Accommodation decisions must be made carefully and consistently in order that accommodated test administration does not give [LEP] students and students with disabilities a competitive edge, but rather ensures equal opportunity to demonstrate what they know and are able to do."

F. Disaggregating Test Scores

Disaggregated test results enable local educators, parents, state policymakers, and civil rights and child advocacy groups to judge the extent to which all students in the state and in individual districts and schools are achieving in relation to the standards in academic content areas. A 1998 report by the Council of Chief State School Officers that analyzed achievement test results observed that disaggregated test scores could be used in a host of helpful ways, including "analyses of current school policies, evaluation of the effectiveness of current school programs, planning the development of innovative instructional interventions, and reporting to parents and citizens on students' collective achievement gains and progress."[77]

Interestingly, provisions requiring disaggregation by race, gender, disability, migrant status, LEP, and low-income status were not recommended by the Clinton Administration in its original legislative proposal to Congress for the reauthorization of Chapter 1.[78] These provisions were added later by the House of Representatives, at the request of members of the Black and Hispanic Caucuses and civil rights organizations, and eventually were approved by the Senate.

Despite petitions to do so, the Department declined to require any disaggregation during the transition period. Moreover, at least one state,

Figure 4. Philadelphia's Accommodations for Disabled and LEP Students

Sp. Ed.	LEP	Accommodation	Reading	Math	Science	Notes
•	•	1. Extension of allotted time	Y	Y	Y	Especially for Reading Test
•	•	2. Use of multiple shortened test period	Y	Y	Y	
•	•	3. Simplification of directions		Y	Y	Simplified directions will be provided
•	•	4. Reading of questions (Math & Science only)		Y	Y	In Spanish for bilingual classes and in English for others
	•	5. Translation of words or phrases on the spot (for Math and Science only)		Y	Y	
•	•	6. Decoding of words upon request		Y	Y	English/Spanish & English/English, except for Reading Tests
•		7. Use of calculator		Y		An accommodation if used in the Procedures subtest
•	•	8. Gesture and nonverbal expression	Y	Y	Y	As a form of decoding or translation
•		9. Allow student to mark answers in test booklet—including drawings and graphics	Y	Y	Y	Responses must be transcribed to a Response booklet
•		10. Allow student to point to response	Y	Y	Y	Responses must be transcribed to a Response booklet
•		11. Allow student to answer orally	Y	Y	Y	Responses must be transcribed to a Response booklet
•		12. Allow student to respond on audio tape	Y	Y	Y	Responses must be transcribed to a Response booklet
•		13. Use of typewriter or personal computer	Y	Y	Y	Responses must be transcribed to a Response booklet
•	•	14. Use of graphic organizers & art work	Y	Y	Y	
•		15. Use of large print edition or magnification device	Y	Y	Y	
•	•	16. Testing in separate room	Y	Y	Y	
•	•	17. Small group setting	Y	Y	Y	
•	•	18. Use of study carrel	Y	Y	Y	

Source: School District of Philadelphia.

Nebraska, flatly refused to require districts to disaggregate during the transition period, citing "a long history in this state of opposition to this practice."[79] On the other hand, several states (such as **Wyoming**) did report their plan to disaggregate data by at least some categories during the transition period. Philadelphia also requires disaggregation. In fact, Philadelphia provides strong incentives to include disabled and LEP students in its assessment program by deducting points on its school performance index for children who have not been tested and for whom there was no valid reason to exclude them from testing. (See Chapter VIII, Good News.)

As to final assessments, the Department's guidance simply reiterates the statutory language.[80]

Finally, with respect to state plans, the Department's peer review and approval process was less than rigorous in ascertaining whether scores from final assessments would be disaggregated and reported in the six categories:

- Only a few states' plans and **Puerto Rico**'s clearly said that the results of their final assessments would be reported by all six categories. These states included: **Alabama**, **Illinois**, **New York**, **Ohio**, **Oklahoma**, **Oregon**, **Pennsylvania**, **West Virginia**, and **Wyoming**.

- Many plans approved by the Department were completely silent with respect to the disaggregation of final assessment results, including the plans of the **District of Columbia**, **Florida**, **Georgia**, **Hawaii**, **Idaho**, **Indiana**, **Massachusetts**, **Mississippi**, **Montana**, **Nebraska**, **New Mexico**, **North Carolina**, **South Carolina**, **Tennessee**, **Vermont**, **Virginia**, and **Washington**.

- Many plans were approved without a clear commitment to report final assessment results by the required categories:

  - Some states, like **Delaware**, **Kansas**, **Kentucky**, **Maine**, **Maryland**, **Missouri**, **New Jersey**, **North Dakota**, and **Rhode Island**, mentioned only some of the required categories.

  - Others (such as **Michigan** and **New Hampshire**) flatly stated that they would disaggregate—but did not say by which categories.

  - Still others, like **Louisiana**, **Minnesota**, and **Nevada**, were unclear or vague.

G. Types of Tests

Many educators and advocates now believe that criterion-referenced tests are a better tool than norm-referenced tests for assessing whether children are achieving high educational standards. Title I implicitly recognized the desirability of criterion-referenced testing when it required that assessments "provide coherent information about student attainment" of state content and performance standards.[81] Laudably, the Department's *Guidance on Standards, Assessments, and Accountability* stressed the disadvantages of norm-referenced testing:

> *State and local assessments must demonstrate how well schools enable students to meet challenging standards developed by the State, rather than focusing on how well students perform against "the norm". . . . [T]he assessments must focus on specifically designed performance standards rather than the generic skills measured by most norm-referenced tests.*[82]

The Department did not, however, explicitly require that criterion-referenced tests be among the multiple measures for final assessments. Instead, it included criterion-referenced tests as an example of multiple measures.[83] Not surprisingly, the Department approved some state plans, such as those of **Alabama** and **West Virginia**, that relied primarily on norm-referenced tests. Most plans, however, noted that states either were in the process of developing their final state assessment system, or planned to use a performance-based or criterion-referenced test as part of their final assessment system.

H. Inappropriate Uses of Title I Assessments

The Secretary has a duty to ensure that students do not suffer harm because of test misuse, particularly in cases that result in adverse impact on students from minority groups. To the Citizens' Commission's knowledge, however, the Department's Office of Elementary and Secondary Education has engaged in little serious discourse with states, or with the Department's own Office for Civil Rights, in an effort to guard against the inappropriate use of Title I assessments. It is axiomatic among testing experts that tests should not be used for purposes for which they were not designed.[84] It is equally clear that Title I tests are designed to hold school officials accountable and not for imposing consequences on students.

Nonetheless, there is concern that some states may now be using, or considering using, their assessments to make educational decisions about students.[85] Many of these decisions, which include withholding high school diplomas, retention in grade, and tracking or placement in low-level classes, may be harmful if not outright discriminatory. Moreover, using tests for high-stakes purposes raises a host of issues about whether students have adequate opportunity to learn and whether there is equity in the distribution of resources.

Endnotes

[1] A norm-referenced test scores individuals' performance in relation to the performance of other individuals. The Scholastic Aptitude Test, for example, is a norm-referenced test. A criterion-referenced test measures the achievement of specific knowledge or skills in terms of absolute levels of mastery: performance is measured against a criterion (or standard). The Advanced Placement tests are criterion-referenced. See Monty Neill *et al.*, *Testing Our Children: A Report Card on State Assessment Systems*, at App. B (Cambridge, MA: National Center for Fair & Open Testing (FairTest) 1997).

[2] The U.S. Department of Education ("Department") filled this mandate by having participants' scores on norm-referenced tests aggregated nationally. See U.S. Department of Education, *National Assessment of the Chapter 1 Program: The Interim Report* (Washington, D.C.: U.S. Department of Education 1992) (hereinafter "*National Assessment: Interim Report*"); U.S. Department of Education, *Reinventing Chapter 1: The Current Chapter 1 Program and New Directions* (*Final Report of the National Assessment of the Chapter 1 Program*) (Washington, D.C.: U.S. Department of Education 1993) (hereinafter "*Reinventing Chapter 1*").

[3] See, e.g., U.S. Department of Education, *National Assessment: Interim Report*, *supra* note 2, at 48-59, 74-82; Commission on Chapter 1, *Making Schools Work for Children in Poverty* (Washington, D.C.: Commission on Chapter 1/American Association for Higher Education 1992).

[4] U.S. Department of Education, *National Assessment: Interim Report*, *supra* note 2, at 77-79 (quoting B.J. Turnbull, *Testing in Chapter 1: Issues and Options* (Washington, D.C.: Policy Studies Associates 1991)).

[5] Commission on Chapter 1, *supra* note 3, at 9.

[6] Neill *et al.*, *supra*, note 1, at 14-15.

[7] As with requirements for the development of state standards (see Chapter III, Standards), Congress intended the development of new assessments for Title I purposes to be congruent with states' plans under the Goals 2000 program. Like the standards requirements, however, states could not simply copy and submit their Goals plan without regard to Title I's assessment requirements. Section 1111(b)(1)(B) of Title I requires states participating in Goals 2000 to use any assessments developed under that program for Title I purposes, but requires that such assessments be "modified, if necessary to conform with the requirements [of Title I]." 20 U.S.C.A. § 6311(b)(1)(B) (Supp. 1998).

[8] Title I of the Elementary and Secondary Education Act (ESEA) § 1111(b)(7), 20 U.S.C.A. § 6311(b)(7) (Supp. 1998).

[9] ESEA § 1111(b)(6)(B), 20 U.S.C.A. § 6311(b)(6)(B) (Supp. 1998). In addition, the law allows the Secretary to grant a one-year extension to states in need of additional time to field test and to correct problems in new assessments. ESEA § 1111(b)(6)(C), 20 U.S.C.A. § 6311(b)(6)(C) (Supp. 1998).

[10] ESEA § 1111(b)(6)(E), 20 U.S.C.A. § 6311(b)(6)(E) (Supp. 1998).

[11] See ESEA § 1111(b)(3), 20 U.S.C.A. § 6311(b)(3) (Supp. 1998).

[12] See ESEA § 1116, 20 U.S.C.A. § 6317 (Supp. 1998).

[13] ESEA § 1111(b)(3)(H), 20 U.S.C.A. § 6311(b)(3)(H) (Supp. 1998).

[14] Diane August *et al.*, *Federal Education Programs for Limited-English-Proficient Students: A Blueprint for the Second Generation* (*Report of the Stanford Working Group*), at 15 & n. 37 (Stanford, CA: Stanford University 1993).

[15] See, e.g., ESEA §§ 1115(b)(1)(B), (b)(2)(A)(i), 20 U.S.C.A. §§ 6315(b)(1)(B), (b)(2)(A)(i) (Supp. 1998) (describing eligibility requirements for targeted assistance schools). In schoolwide projects, the law requires Title I and other funds to be used to improve achievement schoolwide and "address the needs of all children in

the school." ESEA § 1114(b)(1)(B)(iv)(I), 20 U.S.C.A. § 6314(b)(1)(B)(iv)(I) (Supp. 1998).

[16] ESEA § 1111(b)(3)(F)(iii), 20 U.S.C.A. § 6311(b)(3)(F)(iii) (Supp. 1998).

[17] See, e.g., U.S. Department of Education, *Guidance on Standards, Assessments, and Accountability*, at 40 (Mar. 1997) (hereinafter "*Standards Guidance*").

[18] ESEA § 1111(b)(5), 20 U.S.C.A. § 6311(b)(5) (Supp. 1998).

[19] ESEA § 1111(b)(3)(F)(ii), 20 U.S.C.A. § 6311(b)(3)(F)(ii) (Supp. 1998).

[20] See, e.g., U.S. Department of Education, *Standards Guidance*, *supra* note 17, at 45.

[21] ESEA § 1111(b)(3)(G), 20 U.S.C.A. § 6311(b)(3)(G) (Supp. 1998).

[22] ESEA § 1111(b)(3)(I), 20 U.S.C.A. § 6311(b)(3)(I) (Supp. 1998).

[23] ESEA § 1112(b)(1), 20 U.S.C.A. § 6312(b)(1) (Supp. 1998).

[24] Specifically the Department's guidance to states with respect to consolidated state plans asks states to:

- specify their "goals for the academic achievement of all students in . . . [the] state in the core academic subjects";
- describe how they would determine whether all children who benefit from federal programs included in the plan would reach those goals;
- demonstrate that they had "developed or adopted a set of high-quality yearly student assessments" that would be "used as the primary means of determining the yearly performance" of local educational agencies (LEAs) and schools "in enabling all children participating in Title I . . . to meet the State's student performance standards";
- if the state had not developed or adopted final assessments, then it should describe "benchmarks, timetables and reporting schedule for completing the development and field-testing" of final assessments by the 2000-01 school year; and
- specify which transitional assessments the state would "use to assess students' performance in mastering complex skills and challenging subject matter."

U.S. Department of Education, *Elementary and Secondary Education Act (ESEA) as amended by the Improving America's Schools Act of 1994 (IASA) Final Consolidated State Plan (Section 14302 of the ESEA)*, at 3, 12 (undated) (hereinafter "*Plan Instructions*") (providing instructions and criteria for final consolidated state plans).

[25] *Id.*

[26] U.S. Department of Education, *Standards Guidance*, *supra* note 17 at 69-70.

[27] *Id.* at 70.

[28] Letter from the Title I Reform Network to Mary Jean LeTendre, Director, Compensatory Education Programs, U.S. Department of Education (May 31, 1995) (regarding proposed Title I regulations). See also memorandum from Diane August *et al.* (Stanford Working Group) to Eugene Garcia, Director, Office of Bilingual Education and Minority Language Affairs (OBEMLA), U.S. Department of Education (Jan. 30, 1995) (expressing concern that proposed regulations do not require disaggregation of data by economic and limited English proficiency status from transitional assessments); letter from the Title I Reform Network to Mary Jean LeTendre, Director, Compensatory Education Programs, U.S. Department of Education (May 6, 1996) (hereinafter "1996 letter from the Title I Reform Network") (regarding the Department's *Draft Guidance on Standards, Assessments, and Accountability*).

[29] Neill *et al.*, *supra* note 1, at 1-2.

[30] U.S. Department of Education, *National Assessment: Interim Report*, *supra* note 2, at 74, 76.

[31] The University of the State of New York and the State Education Department, *New York State's Consolidated Plan for IASA*, at 17-18, 20 (May 1996); memorandum from James A. Kadamus, Deputy Commissioner, The New York State Education Department, to All Teachers and Administrators in Public and Nonpublic Schools (Feb.

1998) (providing an update on the learning standards and state assessment system).

[32] Janie E. Funkhouser and Katrina G. Laguarda, *Negotiated Rulemaking Session for Title I of the Elementary and Secondary Education Act as Amended: Summary of Issues and Interest Group Positions*, at 19 (Feb. 10, 1995) (unpublished).

[33] U.S. Department of Education, *Notes from the Negotiated Rulemaking Conference Friday, January 13, 1995, Standards and Assessment*, at 18 (undated).

[34] Thomas W. Payzant and Jessica Levin, "The New Title I: Improving America's Schools for Children in Greatest Need," at 23 (Jan. 15, 1995) (draft chapter for John Jennings, ed., *National Issues in Education: Elementary and Secondary Education Act* (Washington, D.C.: Phi Delta Kappa and the Institute for Educational Leadership 1995)).

[35] U.S. Department of Education, *Draft Guidance on Standards, Assessment, and Accountability*, at 17 (Mar. 15, 1996).

[36] U.S. Department of Education, *Standards Guidance*, *supra* note 17, at 59-60.

[37] See, e.g., 1996 letter from the Title I Reform Network, *supra* note 28, at 3. See also Chapter III, Standards (quoting relevant portion of letter). A similar point also was made in a letter from the Title I Reform Network to Marshall Smith, Under Secretary/Acting Deputy Secretary, U.S. Department of Education (Dec. 20, 1996).

[38] Michael J. Feuer *et al.*, Board on Testing and Assessment, *Equivalency and Linkage of Educational Tests: Interim Report*, at 33 (Washington, D.C.: National Academy Press 1998) (emphasis in original).

[39] Colorado Department of Education, *Colorado Consolidated State Plan*, at 14 (May 15, 1996).

[40] Indiana Department of Education, *Improving America's Schools: Indiana's Plan for Consolidation*, at 4-5 (May 1996); U.S. Department of Education, *Summary of Fiscal/Regulatory Review Final Consolidated Application Under Improving America's Schools Act*, at 3 (undated).

[41] Maine Department of Education, *Final Consolidated Plan*, at 2, App. Q (May 1996).

[42] Missouri Department of Elementary and Secondary Education, *Consolidated State Plan for Federal Programs: State of Missouri*, at 12-13 (May 1996).

[43] See New Mexico State Department of Education, *New Mexico Consolidated State Plan*, at 7 (May 15, 1996); State of New Mexico Department of Education, *New Mexico Transitional Assessments Under Title I, ESEA* (May 22, 1997); U.S. Department of Education, *Summary of [New Mexico] Peer Review Final Consolidated Application Under Improving America's Schools Act*, at 1-2, 7 (undated) (hereinafter "*New Mexico Peer Review*").

[44] See California Department of Education, *California Consolidated State Plan*, at 14-16 (May 15, 1996); California Department of Education, *Guidelines for Transitional Assessment* (Jan. 1996).

[45] See, e.g., memorandum from K. Gwen Stephens, Director, Standards, Curriculum, and Assessment Division, to District and County Superintendents of Schools, Testing Directors and Coordinators, re: Standardized Testing and Reporting (STAR) Program (Nov. 20, 1997), <*http://www.cde.gov/cilbranch/sca/star/STAR.html*> (visited Sep. 11, 1998).

[46] Iowa Department of Education, *The Iowa Model for Continuous School Improvement*, at 3 (June 17, 1997).

[47] Montana Office of Public Instruction, *Montana: Improving America's Schools Act of 1994 Final Consolidated State Plan*, at 2, 37-38 (May 15, 1996); Montana Office of Public Instruction, *Modifications to Consolidated Plan for Montana*, at 14 (undated).

[48] Letter from Catherine Schagh, Director, Impact Aid Program and Sponsor, Regional Service Team 8, U.S. Department of Education, to Judy Catchpole, Wyoming Superintendent of Public Instruction, at 4 (Feb. 21, 1997).

[49] See Nebraska Department of Education, *Nebraska Consolidated State Plan*, at 5 (May 1996); Kerry A. White, "In Policy Shift, Nebraska Advances State Assessment Plan," *Education Week*, Mar. 25, 1998, at 21; "News in Brief: A State Capitals Roundup," *Education Week*, Apr. 15, 1998.

[50] District of Columbia Public Schools, *Consolidated State Plan*, at 1(b)-1 n. 2 (May 15, 1996); U.S. Department of Education, *Summary of Peer Review Final Consolidated Application Under Improving America's Schools Act: District of Columbia* (undated); U.S. Department of Education, *District of Columbia Standards and Assessment Conditions* (undated).

[51] Alabama State Department of Education, *Final Consolidated State Plan*, at 13 (Mar. 1997); California Department of Education, *Reaching Higher for Equity and Excellence: California's Standards-Based Accountability System*, <*http://www.cde.ca.gov/iasa/standards/#ruth*> (last updated Aug. 29, 1998; visited Sep. 2, 1998).

[52] August *et al.*, *supra* note 14.

[53] See U.S. Department of Education, *Standards Guidance*, *supra* note 17, at 39-42.

[54] ESEA § 1111(b)(3)(F)(iii), 20 U.S.C.A. § 6311(b)(3)(F)(iii) (Supp. 1998).

[55] U.S. Department of Education, *Plan Instructions*, *supra* note 24, at 12.

[56] *Id.* at 3. The Department's instructions to peer reviewers included similar questions. See U.S. Department of Education, *Reviewer Guide for Peer Reviewers for Final Consolidated State Applications Under the Elementary and Secondary Education Acts, Parts I-III and Summary Form*, at 4, 7 (May 16, 1996).

[57] See U.S. Department of Education, *Summary of Peer Review Final Consolidated Application Under Improving America's Schools Act: Virginia*, at 2 (undated); U.S. Department of Education, *Virginia Standards and Assessments Conditions* (undated); Virginia Board of Education, *Virginia's Consolidated State Application* (May 1996); Virginia Department of Education, *Supplementary Addendum to the Virginia Consolidated Plan in Response to the Summary of Fiscal/Regulatory Review*, at 2 (Mar. 12, 1997).

[58] Indiana Department of Education, *supra* note 40, at 4; Indiana Department of Education, *Responses to Review Committee Critical Questions: Plan for Consolidation*, at 1-2 (June 19, 1996).

[59] Nebraska Department of Education, *supra* note 49, at 5.

[60] ESEA § 1111(b)(3)(F)(iii), 20 U.S.C.A. § 6311(b)(3)(F)(iii) (Supp. 1998).

[61] Arkansas Department of Education, *Consolidated State Plan for Improving America's Schools Act*, at Add. 2 (undated).

[62] Connecticut State Department of Education, *Final Consolidated State Plan (Section 14302 of the Elementary and Secondary Education Act (ESEA))*, at 6 (May 14, 1996).

[63] Illinois State Board of Education, *Consolidated State Application for Federal Programs*, at 61 (June 1996).

[64] U.S. Department of Education, *New Mexico Peer Review*, *supra* note 43, at 6.

[65] Alaska Department of Education, *Addendum to Alaska Consolidated State Plan*, at 4 (May 15, 1997).

[66] In fact, a Superior Court in California prohibited the state from requiring that all students, regardless of English proficiency, be tested in English in statewide assessments. See Millicent Lawton, "S.F. Freed from Testing LEP Pupils in English," *Education Week*, June 3, 1998.

[67] *Lau v. Nichols*, 414 U.S. 563, 568 (1974) (holding that failure to provide English language instruction or provide other adequate instructional procedures to students of Chinese ancestry who did not speak English denied them a meaningful opportunity to participate in public educational programs and thus violated Title VI of the Civil Rights Act of 1964).

[68] Individuals with Disabilities Education Act (IDEA) Amendments of 1997, Public Law No. 105-17, 111 Stat. 37 (codified as amended at 20 U.S.C.A. § 1400 *et seq.* (Supp. 1998)).

[69] U.S. Department of Education, *Standards Guidance*, *supra* note 17, at 42-43.

[70] IDEA § 612(a)(17)(A), 20 U.S.C.A. § 1412(a)(17)(A) (Supp. 1998).

[71] IDEA § 612(a)(17)(B), 20 U.S.C.A. § 1412(a)(17)(B) (Supp. 1998).

[72] IDEA § 614(d)(1)(A)(v), 20 U.S.C.A. § 1414(d)(1)(A)(v) (Supp. 1998). It should be noted that the burden is on the Individual Education Plan (IEP) team to justify why the child is not tested, or to come up with an

alternate assessment.

[73] IDEA § 612(a)(17)(A)(i), 20 U.S.C.A. § 1412(a)(17)(A)(i) (Supp. 1998).

[74] See, e.g., Richard L. Allington and Anne McGill-Franzen, "Unintended Effects of Educational Reform in New York State," 6 *Educational Policy* 397 (1992).

[75] The IDEA itself requires, as appropriate, the state or LEA to develop guidelines for disabled students' participation in alternate assessments, but does not appear to require guidelines for determination of which children "cannot participate" in the state or district assessment program. See IDEA § 612(a)(17)(A), 20 U.S.C.A. § 1412(a)(17)(A) (Supp. 1998). Instead, that determination is left to the discretion of the child's IEP team, composed of the child's parents, regular teacher, special education teacher, an LEA representative, and other personnel as appropriate. IDEA § 614(d)(1)(B), 20 U.S.C.A. § 1414(d)(1)(B) (Supp. 1998). Parental participation in the IEP team will, to some degree, help ensure that decisions are made in the best interest of the child, not just in the best interest of the school or district.

Also, the Department has stressed the importance of including disabled students in statewide assessment systems. In a letter outlining revisions to the IDEA, Department officials emphasized:

> *it is of utmost importance that students with disabilities be included in the development and implementation of assessment activities. Too often, in the past, students with disabilities have not fully participated in State and district assessments only to be short-changed by the low expectations and less challenging curriculum that may result from exclusion.*

They also noted that only "[f]or the small number of students whose IEP's specify that they should be excluded from regular assessments, including some students with significant cognitive impairments, participation in regular assessments is not appropriate." "Dear Colleague" letter from Judith E. Heumann, Assistant Secretary for Special Education and Rehabilitative Services, and Norma V. Cantu, Assistant Secretary for Civil Rights, U.S. Department of Education (Sep. 29, 1997).

[76] Maine Department of Education, *supra* note 41, at 10.

[77] Richard M. Jaeger and Charlene G. Tucker, *Analyzing, Disaggregating, Reporting, and Interpreting Students' Achievement Test Results: A Guide to Practice for Title I and Beyond*, at 7 (Washington, D.C.: Council of Chief State School Officers 1998).

[78] H.R. 6, 103d Congress (1994).

[79] Nebraska Department of Education, *Addendum to the Nebraska Consolidated State Plan*, at 4 (Mar. 4, 1997).

[80] U.S. Department of Education, *Standards Guidance*, *supra* note 17, at 22.

[81] ESEA § 1111(b)(3)(B), 20 U.S.C.A. § 6311(b)(3)(B) (Supp. 1998).

[82] U.S. Department of Education, *Standards Guidance*, *supra* note 17, at 46.

[83] *Id.* at 25.

[84] See, e.g., American Educational Research Association *et al.*, *Standards for Educational and Psychological Testing* (Washington, D.C.: American Psychological Association 1985) (outlining standards for appropriate test use); Joint Committee on Testing Practices, *Code of Fair Testing Practices* (Washington, D.C.: National Council on Measurement in Education 1988) (outlining standards for appropriate test use); Lorrie Shepard *et al.*, *Principles and Recommendations for Early Childhood Assessments*, at 4 (Washington, D.C.: National Education Goals Panel Feb. 1998) (describing how "instruments developed for one purpose or even one age group have been misapplied to other groups" leading to mislabeling of children as unready for kindergarten).

[85] A recent report found that 17 states use a test as a high school graduation requirement, 2 states include state assessments in determining grade promotion, and some districts are using state assessments in determining placement, grade promotion, or graduation. Neill *et al.*, *supra* note 1, at 17.

Chapter V

Accountability

I. The Need for Greater Accountability in Title I Schools

For years, school officials have not expected high-poverty schools to produce results—and therefore they have not. Despite widespread lip service to the proposition that "all children can learn," high-poverty schools persistently have failed, and continue to fail, to reach even the most basic levels of proficiency on national achievement measures. (See Chapter II, Federal Aid to Education, and Chapter III, Standards.) The painful reality is that too many high-poverty schools will teach only what they have to, and only to those students they absolutely must teach. When schools are not held accountable for science, for example, it is taught poorly or not at all. Similarly, when state-adopted reforms require schools to ensure that only 50% of their students meet a given standard, schools will target their efforts toward moving those closest to the standard up to or over the threshold, with little or nothing done for the remaining, lowest-achieving students who are more often poor children of color and disproportionately limited English proficient. Moreover, if the standard itself is low, schools will stop once that goal has been reached, and little will be done to teach to higher levels.

All of this is in the face of an abundance of evidence suggesting that high-poverty schools can be successful when they deploy Title I and other resources in ways that make a difference.[1] Even so, for years, the old law contributed to schools' failure by codifying low expectations for students and schools participating in the program. Until 1988, the law, then known as Chapter 1, required accountability only for finances, not for student achievement. The 1988 amendments to Chapter 1 introduced the concept of accountability for student outcomes for the first time in the history of the program by requiring review, evaluation, and improvement in student achievement.[2]

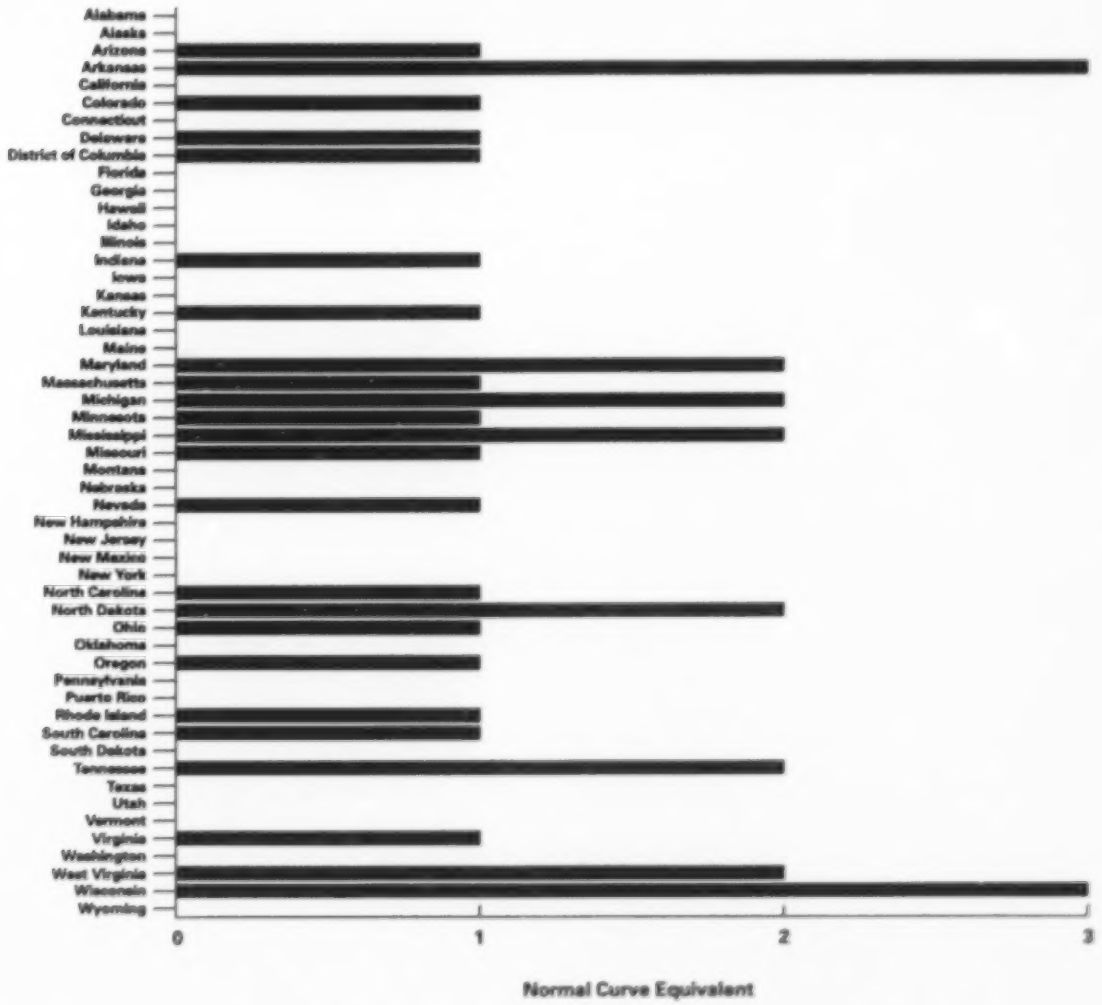
But this first attempt at accountability had only modest success, largely because the states set the standards for Chapter 1 schools too low and there were few, if any, consequences for failing to meet these standards. The law permitted states to establish their own outcomes and required only the most minimal achievement gains for districts and schools to avoid being placed in "program improvement."[3] In many states, schools could pass muster from year to year without closing the gap between low- and high-achieving students, simply by posting a gain of one normal curve equivalent (NCE) (a standard measure of improvement[4]) or less, on a norm-referenced test of basic skills among participating students. (See Figure 1.)

Moreover, the consequence of not meeting this standard—being placed in "program improvement"—was almost never accompanied by any real attempt to retool or restructure failing schools, or to enforce any public accountability process.

Further, the Chapter 1 law retained a perverse incentive for schools to maintain low test scores—school eligibility was determined on the basis of low achievement, not student poverty levels. Thus, a school that actually was successful in raising test scores risked losing its federal funds.

In short, these 1988 changes "were nowhere near enough. The program needed an overhaul from top

Figure 1. Aggregate Achievement Standards Used by States for Program Improvement, 1991-1992



Note: A majority of states (27) and **Puerto Rico** used the minimal achievement standard established in the Chapter 1 regulations (i.e., no gain or a loss in NCEs) to determine whether schools are in need of program improvement. **Florida** required more than 50% of students to increase at least 1 percentile rank. **Mississippi** required 1.5-2.0 NCE gains for grades two through six, and 1 NCE gain for grades seven through twelve.

Source: U.S. Department of Education, *National Assessment of the Chapter 1 Program: The Interim Report*, at 57-58 (Washington, D.C.: U.S. Department of Education 1992).

to bottom; what it got was a mere tuneup."[3] The new Title I law, as reauthorized in 1994, contains stronger requirements for both school and district accountability. When carried out in conjunction with other Title I requirements for enhanced capacity-building in participating schools and for fair, accurate assessments, these accountability measures provide incentives to help failing schools, and, if those incentives do not succeed, call for corrective action.

This chapter (1) reviews the law's accountability requirements with respect to both transitional and final assessments; (2) analyzes the U.S. Department of Education's ("Department") interpretations of several new Title I provisions important to poor and minority students; and (3) examines accountability measures included in state plans approved by the Department.

II. What the New Title I Requires: Swift Action to Improve Failing Schools

Under the new Title I, states must develop and implement comprehensive systems of accountability for all Title I schools. These accountability systems must be based on state standards and assessments aligned with those standards. The law allows states up to five years to develop and begin to administer their final assessment system (see Chapter IV, Assessments), and while accountability requirements differ between the so-called "transition" period and the final assessment period, throughout the entire reauthorization period, states and districts are obligated to identify failing Title I schools and take concrete steps to improve them.

A. A Time for Immediate Action: Transitional Accountability

What states and districts do (or fail to do) during the transition period is at least as important as the actions they will undertake later under a more sophisticated final accountability system. This is so even though the law prescribes fewer steps with regard to accountability during the transition period than after final assessments are in place. But for many children served in this program, the final accountability system will be installed too late for them to reap any benefits; for these children, only improvement measures taken during the transition period will matter.

Given the possibility that final accountability systems may not be fully in place before this reauthorization expires, the actions of districts and states during the transition period take on additional importance. In many instances, Congress and the public will be constrained to rely on evidence about the success or failure of transitional accountability measures in evaluating the efficacy of the 1994 amendments. Those who oppose a strong federal role in education, with concomitant funding, will likely seize on any weaknesses in the Title I program—including any failure to improve academic results—in making their case.

Title I schools and districts must show substantial and continuous progress in student achievement during the transition period. Under the new law, states must:

- use an assessment system that measures the performance of complex skills and challenging subject matter, to be administered at some time during grades three to five, grades six to nine, and grades ten to twelve;
- develop a procedure, which relies on accurate information about academic progress, for identifying districts and schools in need of improvement;
- by the 1997-98 school year, identify and assist school districts in need of improvement; districts in turn must identify and assist schools in need of improvement; and
- identify for improvement all schools which previously failed to meet the required outcomes under the old Chapter 1.[4]

These transitional accountability requirements are intended to result in rapid action to improve the worst-performing Title I schools in each state. The length of the transition will vary from state to state (up to the outside five-year limit permitted by law—the 2000-01 school year), depending on how long it takes the state to develop and administer the new Title I assessments.[7] (See Figure 2.)

Figure 2. School and District Accountability: Improvement Process Timeline

	Year 1 (1995–1996)	Year 2 (1996–1997)	Year 3 (1997–1998)	Year 4 (1998–1999)	Year 5 (1999–2000)	Year 6 (2000–2001)
Schools already in program improvement for two consecutive years prior to 1995-96 school year	Technical assistance and optional corrective actions.	=>	Required corrective actions for schools still not making adequate progress.			
All other schools	Failure to make adequate progress.	=>	Identification of school. Technical assistance and optional corrective actions.	=>	Required corrective actions for schools still not making adequate progress.	
Districts	Failure to make adequate progress.	=>	Identification of district. Technical assistance and optional corrective actions.	=>	=>	Required corrective actions for districts still not making adequate progress.

Source: U.S. Department of Education, *Guidance on Standards, Assessments, and Accountability*, at 83 (Mar. 1997).

B. Final Accountability Systems

While the law allows each state to design its own final accountability system, aligned with its own state standards, assessments, and reform efforts, the following key elements must be included to ensure a viable system and meaningful school improvements: (1) adequate yearly progress; (2) public engagement; (3) identification and help for schools and districts in need of improvement; (4) corrective action; and (5) requirements for state plans.

1. Adequate Yearly Progress

The key to an effective accountability system is a determination, and public statement, of the gains expected of students, schools, and school districts. Under the new Title I accountability system, the state makes this determination through its definition of the term "adequate yearly progress" (AYP). Using both its performance standards (i.e., "advanced," "proficient," and "partially proficient") and its final assessment, each state must devise its own definition, within the parameters set by federal law, of what constitutes AYP for schools and school districts receiving Title I funds. The law requires that AYP be defined in a manner that:

- "result[s] in *continuous and substantial, yearly improvement*" of each Title I district and school "*sufficient to achieve* the goal of all children served under . . . [Title I], meeting the State's proficient and advanced levels of performance, particularly economically disadvantaged and limited-English proficient children;" and

- "links progress primarily to performance on . . . [state] assessments . . . while permitting progress to be established in part through the use of other measures," such as dropout, retention and attendance rates.[8]

To be "sufficient to achieve" the goal of moving all, or virtually all, participating students to the proficient and advanced levels of performance within some reasonable time period means that the definition of AYP will need to require different rates of progress for different students. For example, a rate of progress that applies equally to all students will not enable poor and limited English proficient (LEP) students to narrow or close the achievement gap between themselves and their more economically advantaged, English-speaking peers. Nor will it enable such students to achieve the expected proficiency levels within a reasonable time period. Necessarily, then, to reach that goal, states must set faster rates of progress for poor and LEP students because those students have further to go to reach the proficient and advanced levels of performance.

Congress also made clear that progress must be more than sporadic or token. The law requires progress that is both *substantial* and *continuous*. To be "substantial," the amount of expected progress should be much more than minimal. To be "continuous," schools should make progress toward increasing the proportion of their students who are achieving at higher levels and decreasing the proportion of their students who are achieving at lower levels. Finally, if the goal truly is to move *all* children to higher levels of proficiency, the AYP definition must set targets ultimately for all students, across the entire distribution of pupil performance. In addition, the law contemplates that the requirements of AYP will be satisfied only if a district or school makes such progress for disadvantaged and LEP students as well as for the student body as a whole.

2. Public Engagement

Title I requires that all schools have accurate information available about how the school as a whole and children in particular grades, subjects, and demographic groups are performing. State assessment systems must allow results to be disaggregated at the state, district, and school level by gender, by each major racial and ethnic group, by English proficiency status, by migrant status, by student disability, and by student poverty.[9]

These disaggregated results must be disseminated—that is, the state must use the assessment to

conduct an annual review of each school district, and then must publicize the review's results by distributing them to the districts, teachers, other staff, parents, students, and the community.[10] School districts must conduct and publicize a similar district-level review for each school.[11]

3. Identification and Help for Schools and Districts in Need of Improvement

Based on the definition of AYP, and using the publicly available results of assessments and other measures, Title I requires districts to identify schools in need of improvement, just as states must identify districts in need of improvement.[12] The law recognizes that, in many cases, the reason that schools will be identified as needing improvement is a lack of capacity to educate their students to acceptable levels of proficiency. Title I therefore mandates capacity-building assistance to schools in need of improvement. Where many schools in a single district fail to make adequate yearly progress, the state, for the first time in the 30-plus year history of Title I, is required to target the district for improvement as well.

Thus, Title I places on both state and district officials a duty to provide extensive help and assistance to schools and districts which are identified as not making adequate yearly progress. For example, Title I mandates additional professional development for schools identified as in need of improvement, which must, over a 2-year period, devote to staff development an amount equal to 10% of their annual Title I allocation.[13]

4. Corrective Action

The law recognizes it is unlikely that, even with additional help such as increased professional development, every school and district targeted for improvement actually will make sufficient improvement. Additional remedial measures, termed "corrective actions," are required when schools or districts, despite intervention, continue to fail.

District Role. School districts may take corrective action at any time, but they are *required* by law to take corrective action to deal with schools that fail to make adequate progress in the third year following the identification. (See Figure 2.) These actions must be consistent with state and local law, and school districts must inform the public. Corrective actions may include:

- withholding funds;
- revoking a school's authority to operate a schoolwide program;
- decreasing decisionmaking authority at the school level;
- making alternative governance arrangements, such as the creation of a public charter school;
- reconstituting the school staff;
- authorizing students to transfer to other public schools served by the district, and covering those students' transportation costs; or
- creating interagency collaborative agreements between the school and other public agencies to provide health, counseling, and other social services needed to remove barriers to learning.[14]

State Role. Just as districts may take action to deal with failing schools, the law further authorizes state educational agencies to take corrective action at any time against districts that have been identified as needing improvement. Again, the law *requires* action by the state in the fourth year after the district's identification if the district still is in need of improvement. (See Figure 2.) Like those employed against schools, the state's corrective actions against its districts must be consistent with state law and be disseminated to the public. They may include:

- withholding funds;

- authorizing students to transfer from one school district to another;
- reconstituting school district personnel;
- removing particular schools from the district's jurisdiction and establishment of alternative arrangements for public governance and supervision;
- appointing a receiver or trustee to replace the superintendent and school board;
- abolishing or restructuring of the school district; or
- creating a joint plan between the state and district that addresses specific elements of the student performance problems and specifies state and district responsibilities under the plan.[15]

5. Requirements for State Plans

The law requires each state to spell out its core accountability provisions in the state plan reviewed by the Department. Review and approval of state plans enables the Department to assure the integrity of Title I accountability systems and to protect the interests of the program's beneficiaries.

Each state plan must:

- contain a definition of adequate yearly progress for schools and districts that meets the requirements of federal law; and
- provide a description of any transitional accountability measures to be used, including transitional assessments and plans to hold schools accountable for the results of those assessments.[16]

III. The U.S. Department of Education's Enforcement Record and State Compliance

A. Overview

The amended Title I statute requires recipients to take swift and effective action to ensure that no child is left behind, all children get the instruction and assistance they need to reach high standards, and schools and districts be held accountable for the progress of all children served in the program, including economically disadvantaged, low-achieving, and LEP students. In light of these mandates, the most important considerations in reviewing states' Title I accountability proposals should be whether progress will be expected for all children, or for just some children, and whether the progress will be achieved in a timely way.

To its credit, in its instructions on preparing state plans, the Department asked states to provide descriptions of:

- how the state would review the progress each year of each school district receiving Title I funds in order to ascertain the progress of Title I schools toward achieving the state's student performance standards; and
- what criteria should be used to identify districts that are deemed not to be making adequate progress.[17]

In addition, in its guidance, the Department asked states to require "substantial and continuous" progress during the transitional period (a requirement not explicit in the statute), as well as during the final period. Unfortunately, as discussed in Chapter III, Standards, this guidance was issued after state plans had been submitted to the Department.

Regrettably, the Department's enforcement to date of Title I's accountability requirements has glossed over the widespread propensity of school officials to maintain and tolerate a permanent underclass of low-achieving students who are disproportionately

poor and minority. In some cases abetted by guidance issued in contravention of the law, and in other cases in spite of its own helpful guidance, the Department has approved scores of accountability provisions in state plans that do not conform with the new law. In large measure, these deficiencies will permit, and in some cases exacerbate, dual standards within states, within districts, and even within individual schools, for advantaged and disadvantaged students.

Specifically, these deficient components of state accountability systems:

- indicate that in many cases, the state had failed to develop in approved plans a credible strategy for holding schools accountable and for taking corrective action against chronically underperforming schools during the transition period;
- permit school districts within states to set their own definitions of how much progress will be acceptable, rather than adhering to a high, statewide measure;
- contain few or no provisions and safeguards to ensure LEP and poor children also make adequate progress toward achieving the standards;
- set a single, absolute cutoff point for adequate progress instead of requiring continuous improvement, thereby permitting schools to continue to fail to adequately educate the many Title I children who score below the cutoff;
- require rates of progress that are so low that many children will not be expected to reach proficiency, and fewer still will attain advanced skills, within a reasonable time;
- provide no description or explanation of the criteria for identifying school systems in need of improvement; and
- are so vague that it is difficult to determine how states will apply them or what they would accomplish.

The following sections discuss these deficiencies, both with respect to the Department's own interpretation of the relevant statutory provisions and related state plan review process, and with regard to the contents of the state plans themselves.

B. Transitional Accountability

Standards-based education reform has not proceeded at a uniform pace; states are in various stages of reform, and their accountability systems, as described in state plans, reflect that variation. States in the vanguard of education reform established policies and procedures for targeting and assisting the lowest performing schools well before the 1994 reauthorization of Title I. Indeed, the new federal law was modeled to some extent on what these early reform states were doing. But for many other states, accountability policies were nascent or ill-defined at the time of reauthorization. Faced with putting something down on paper in the spring of 1996 to submit to the Department, state officials' explanations of transitional measures were often vague or incoherent.

By far the greatest number of deficiencies the Department identified in its initial review of state plans involved procedures for identifying schools and districts for improvement during the transition period. Of the 46 plans approved with Title I conditions requiring revisions, 28 concerned this issue. (See Chapter III, Standards, for more on state plan approval.) The Department asked for revisions by March 15, 1997, many of which necessitated further negotiation and clarification in order for the condition to be removed by July 1, 1997, so that millions of federal funds tied to the plan could be released for the next fiscal year. Laudably, the Department recognized the need to assist schools and dispatched technical assistance to states that asked for help in developing transitional accountability measures.

The fact that the majority of states did not devise a credible method of identifying schools and districts needing improvement during the transition period was compounded by the Department's own lack of quality control in the plan review and approval

process. As a result, states were treated inconsistently. The **Minnesota** plan, for example, has no transitional criteria, a defect that peer reviewers noted as a "weakness" of the plan. (According to the Minnesota plan, local school districts, not the state, would "develop desired outcome measures" during the transition period).[18] However, the Department approved Minnesota's plan without conditions. Similarly, the Department approved **South Carolina**'s plan without conditions, even though peer reviewers recommended that the state provide "a more precise description of its transitional assessment process to include how schools and districts will be identified for improvement."[19]

In contrast, other state plans with similar defects, such as **North Dakota**'s[20] and **Delaware**'s,[21] were approved with the stipulation that the state formulate clear procedures for holding schools and districts accountable for improving their performance.

Plans with notably poor transitional criteria for improvement include:

- **Washington**, during the transition period, proposed to identify schools and districts in need of improvement by using reading and math scores from the "current state testing program" in grades four and eight, and results from math and English in grade eleven. (The state will be piloting a new assessment during the transition period.) The state proposed to identify as "potential candidates" for district improvement those districts that do not reduce, over a 2-year period, "the percentage of students scoring at or below the 25th percentile in either reading or math." But the plan failed to specify on what, if any, basis Washington will actually place its candidates in district improvement. As for schools in need of improvement, the state again set no definitive criteria, but merely said it would assist districts in identifying schools in need of improvement. A panel of three peer reviewers questioned, "Will this criterion lead to high standards for all students?" The panel apparently recognized that the state had set a rather low and fuzzy bar for school improvement, and did not intend to require any substantial progress.[22] Yet modification of transitional improvement criteria was *not* a condition of plan approval.

- **West Virginia**'s original plan simply defined adequate yearly progress as "grade level achievement at the elementary level and standardized test achievement at or above the 50th percentile at the secondary level," with no further explanation. When the Department required further clarification of the transitional criteria, the state outlined the following process for identifying schools and districts for program improvement: in 1995-96, schools were "red-flagged" for possible improvement status if their scores on the CTBS (a standardized test) "fell below the 50th percentile in total reading and/or total math at grades 3, 6, 9, 11"; in 1996-97 and beyond, schools would be identified for program improvement if their aggregate test scores on the Stanford Achievement Test (another standardized test) fell below the 50th percentile in total reading and/or total math in every grade three to eleven.[23] This process, however, is a straight "cutoff" system, requiring neither continuous nor substantial improvement. It provides no inducement to schools or districts to get all children to a high standard of proficiency, and it tolerates continued low achievement of many students who are not expected to improve. As long as aggregate scores remain at a mediocre level, the school district avoids being identified for improvement.

There were, however, some states that came closer to meeting Title I's requirements for transitional criteria. For example:

- **New York**'s plan requires at least 90% of students in a school to score above a "state reference point" on tests in reading or math. (Students who score below this point are identified for remediation). If a school does not meet this level of performance, it would need to make progress toward meeting that standard by closing one-fifth of the gap between the actual performance and the

desired performance within two years, and by another one-fifth in each successive year. Schools not meeting the state's substantial improvement requirements are targeted for improvement until the standard is met. While this definition does call for continuous and substantial improvement of schools below the designated performance level, it nonetheless has some flaws. Because it is a cut score system, it does not require *all* students to make continuous and substantial improvement—only those below the score must do so. Also, the phrasing implies that a school could have all of its students failing one subject and still be determined to have made adequate yearly progress.[24]

C. State vs. Local Definitions of Adequate Yearly Progress

As with standards and assessments, the new Title I clearly contemplates uniform statewide standards for accountability to guard against lower standards being set in high-poverty school districts.[25] Such a uniform accountability system is also needed to assure fundamental fairness in meting out rewards and sanctions; otherwise, as one group of advocates commented to the Department in connection with its proposed regulations, District "A" could end up being sanctioned by the state for performance that may have been deemed acceptable in District "B." In addition, uniform accountability addresses the likelihood, demonstrated by experience, of significant locally based pressure in many school systems (particularly high-poverty, low-achieving districts) to move slowly and to dilute performance standards.[26]

Nonetheless, the Department equivocated for months over whether individual school districts, instead of the state, could set their own definitions of adequate yearly progress. At a Department-sponsored conference in St. Louis in September 1996, for example, the Director of the Compensatory Education Program, Mary Jean LeTendre, told school officials that the draft guidance would allow districts to set their own standard for adequate yearly progress. But, she added, states still had to have a standard for judging the adequacy of local definitions. These remarks were necessary, LeTendre said, because "some states are taking a more hands-off approach than I think they should."[27]

Subsequently, the Department produced drafts of guidance sanctioning state systems that permitted a version of the "local option."[28] Many advocates for poor and minority children objected to this interpretation of the law, and the Department eventually reversed course.

The final version of the regulations merely restates the law and thus on its face does not permit a local option. The guidance that was ultimately issued provides as follows: "While a state may allow [districts] to add local assessments with the States' approval or to develop their own assessment system approved by the State and judged on the basis of models or criteria for high quality assessments, *the State must define adequate yearly progress*."[29]

Nevertheless, the damage had been done. The Department's vacillation and prolonged delay in issuing final guidance consistent with the law sent the wrong message to states and undermined the statutory goal of statewide accountability measures to increase all students' achievement. Following are some examples of state plans that proposed some form of "local option" with respect to accountability. (See also Figure 3.)

- **Colorado** has a state assessment, but also allows districts to develop their own transitional assessments using state criteria. District officials must determine four performance standards for their assessments: "in progress," "partially proficient," "proficient," and "advanced." The state defines adequate progress as a total yearly increase of at least 10% at the "proficient" and "advanced" levels combined, *or* a 10% increase in the "partially proficient," "proficient," and "advanced" levels combined. However, if every district defines these levels differently, what is "in progress" in one district could be "partially proficient" in another. Further, as one reviewer noted, under the second alternative, a school could make adequate progress without any increase in students per-

Figure 3. California and Local Accountability

In its consolidated plan to the Department, the **California** Department of Education (CDE) proposed to permit each of its more than 1,000 school districts to set their own standards for school progress. On July 1, 1996, following peer review, the Department rejected this proposal by provisionally approving the plan with the condition that California cure this deficiency and report on its efforts to do so by September 30th. To its credit, over the course of the next year, as it negotiated back and forth with the state, the Department steadfastly held to its position that the state, not school districts, must set the standards for performance and define adequate yearly progress. In a strongly worded letter in February 1997 to the CDE's Education Technology Office, the Department clearly explained its position, cautioning that the state "must ensure that some LEAs [local educational agencies] do not set less challenging standards than other LEAs in the State."

Although the Department received no fewer than seven drafts of California's proposed guidance to school districts on Title I accountability, the state never changed its position on local accountability standards. The seventh and last version of the state's guidance was faxed to the Department for approval on May 13, 1997 *four days after* it had been posted on the CDE's web page and disseminated to districts. While containing language recommending that certain numerical standards be used by districts to identify schools in need of improvement, this version still did not comply with the law.[30]

Following receipt of this draft, the Department removed the conditions on the California plan without any real showing that the deficiency identified one year earlier had been corrected. As a result, federal dollars continued (and continue to this day) to flow to the State of California despite clear evidence in the Department's possession that California officials are acting in disregard of a key provision in the law. An undated note in the Department's file indicating approval of the state's accountability guidelines indicates: "California needs to provide report on the results of its process for identification of LEAs in need of improvement for insuring consistency in the identification of schools in need of improvement." But, as matters were left, the Department had no reliable way of knowing whether expectations for student performance in the state's 1,052 school districts were even remotely comparable from one district to the next, nor is it clear that the state could make that determination.

It may be noted that California, having repealed its affirmative action policy, does not follow multiple standards in admitting students to the state university system. Accordingly, students graduating from school districts with lower standards may be at a real competitive disadvantage in applying to state universities.

Sources: California Department of Education, *California Consolidated State Plan*, at App. C (May 15, 1996); letter from Gerald Tirozzi, Office of Elementary and Secondary Education, U.S. Department of Education, to Delaine A. Eastin, California Superintendent of Public Instruction (July 1, 1996) (conditionally approving plan); letter from Mary Jean LeTendre, Director, Compensatory Education Programs, U.S. Department of Education, to Taj Pandy, California Department of Education (Feb. 24, 1997); letter from Delaine Eastin, California Superintendent of Public Instruction, to District and County Superintendents (May 9, 1997); California Department of Education, *Guidelines for Identifying IASA, Title I, Program Improvement Schools During the Period of Transitional Assessment*, at 2-3 (May 1997); letter from Gerald N. Tirozzi, Office of Elementary and Secondary Education, U.S. Department of Education, to Delaine A. Eastin, California Superintendent of Public Instruction (June 12, 1997) (removing conditions).

forming at the "proficient" and "advanced" levels: a school simply would have to move students from "in progress" to "partially proficient"! The reviewer also noted that there was no state review of how districts set their performance levels, which the Department required even when the draft guidance allowed locally established criteria. But since this "problem" had not been identified and raised with state officials in the original review process, the Department determined that it was not going to require Colorado to revise its transitional procedures, and instead would simply raise it as a concern.[81]

- When the finalized **Delaware** State Testing Program goes into effect in the 1998-99 school year, districts will establish their own procedure for adequate yearly progress based on district assessment procedures. The state department of education "will review that data and establish acceptable levels for each district." Title I students will be expected to perform at the same level as non-Title I students *in that district*, but the plan contains no real assurance that the same high expectations for all students will apply in all districts.[82]

D. Measuring the Progress of Poor and LEP students

Civil rights and other advocates lobbied and successfully won inclusion of a provision in the 1994 legislation requiring adequate yearly progress for poor and LEP students. The provision, which was not in the Administration's original bill,[83] provides that states' AYP definitions must be sufficient to achieve the goal of "all children served" meeting the standards, "particularly economically disadvantaged and limited English proficient children."[84] Moreover, lest there be any uncertainty that such children must be fully included in the accountability system, the Senate Report accompanying the legislation noted: "The committee does not intend . . . for a school or LEA to be deemed to have made adequate progress if its overall students' performance is acceptable but the performance of disadvantaged students served is not satisfactory."[85]

Yet early drafts of the Department's guidance did not require states to include poor and LEP students in their definitions of AYP.[86] At the time, the Title I Reform Network (a group of education advocates and legal experts) called the Department's attention to this defect in commenting:

> *The guidance as drafted would allow states to consider schools and districts to be making sufficient progress in cases where increasing numbers of students overall were meeting standards, but poor and LEP students were not. In practice, this approach could lead to schools concentrating their resources on those students closest to meeting the standards, while neglecting the poorest and least proficient students. This is not what Congress intended, nor is it what the law on its face requires.*[87]

In response, Acting Deputy Secretary Marshall Smith wrote: "[W]e respectfully disagree. . . . The Title I statute does not require States to examine separately the progress of selected groups in determining adequate yearly progress."[88]

Subsequently, final guidance was issued in the spring of 1997. In some sense, the final guidance is an improvement over earlier drafts, in that it encourages, although does not require, states to hold districts accountable for the progress of poor and LEP students, not just for overall progress:

> *The law does not specifically require States to examine separately the progress of selected groups in determining adequate yearly progress. However, the law does indicate that adequate yearly progress must be defined to achieve the goal of all Title I children, "particularly economically disadvantaged and limited-English proficient children," meeting the State's proficient and advanced levels of performance. It is unclear how an LEA could realistically achieve this goal, certainly over several years, if economically disadvantaged and limited-English profi-*

cient children are not also making substantial and continuous improvement."

To the detriment of these children, however, this guidance provides too little too late: it fails to *require* full inclusion in the accountability system, and it was added long after state plans were submitted and approved.

Nor did the Department require its peer reviewers to properly consider accountability for poor and LEP children in assessing whether state plans met the requirements of the law. Although the Department asked reviewers generally whether "the stated goals address educational needs of all children who benefit from the Federal programs included in this plan, in particular those who attend high-poverty schools, and migrant, neglected, delinquent, homeless, limited English proficient, and other groups of children whom the programs serve," the reviewer guide did not mention poor or LEP children when specifically discussing the topics of adequate yearly progress and transitional assessments.[40] Only panel chairs received a clarification that, if a state had a final assessment, the definition of adequate yearly progress must "result[] in continuous and substantial yearly improvement of each school and LEA sufficient to achieve the goals of all children served under Title I, Part A, particularly economically disadvantaged and limited-English proficient children, meeting the State's proficient and advanced levels of performance."[41] But even this clarification merely mirrored statutory language, without providing clear direction to panel chairs that states must have concrete plans for holding schools and districts accountable for the progress of poor and LEP children.

The instructions for preparing state plans did include the statutory requirement, but were issued in advance of the policy guidance and were not accompanied by any additional clarification. Thus, they too were of limited utility in advising states of the statutory mandate to include poor and LEP children in accountability systems.[42]

Not surprisingly then, in light of the poor guidance to states and the Department's own construction of language in the law it apparently never fully embraced, states' plans with respect to accountability for poor and LEP children were almost uniformly deficient. Many state plans, such as **Arkansas**, **California**, **Illinois**, **Massachusetts**, **New Jersey**, **Ohio**, **South Dakota**, and **Wyoming**, were silent on whether or how poor and LEP students would be included in the accountability system. Others, like **Hawaii** and **South Carolina**, were unclear. Some states, for example, **Vermont**, addressed economically disadvantaged students but not those with limited English proficiency. No state fully satisfied the law's requirements.

The following examples show how some states have begun to address, at least partially, the need to focus attention on the progress of poor and LEP students:

- **Alaska** will determine adequate yearly progress by considering a combination of: "1. Percent of all students judged proficient, 2. percent of economically disadvantaged students judged proficient," and "3. percent of LEP students judged proficient." The state pledged that "[s]tudent data will be disaggregated by at least LEP and economically disadvantaged and districts whose Title I students are not making adequate progress will not be able to achieve an adequate progress designation even if the schools' average progress is sufficient."[43]

- Under **Arizona**'s plan, the state will set student achievement "milestones" which will apply "*to all disaggregated subgroups* (e.g., gender, ethnicity, migrant or LEP status) to ensure equal progress across groups. Advancements in student performance must be measured in this way so that *average* student performance does not mask the challenges or obstacles that may b[e] faced by children who are intended to benefit from the strategies and activities described in this Plan." However, Arizona does not require separate progress for disaggregated groups during the transitional period. Instead, the plan proposes to close, by an unspecified percentage, the gap between the baseline (the percentage of students achieving proficiency or advanced proficiency in

the spring of 1996) and 100% of all students achieving proficiency and advanced proficiency. The Department did not request, and Arizona never sent, any information indicating that the state had determined the requisite percentage of progress during the transition period.[84]

- **Texas** comes closest to meeting the law's requirements and is in the forefront of efforts to establish accountability for the performance of all students, including student subgroups. Texas requires districts to make adequate yearly progress by attaining an "academically acceptable" rating. To gain that rating in the 1996-97 school year, at least 35% of all students *within each student group* (African American, Hispanic, white, and economically disadvantaged), as well as all students, must pass each section of the state assessment. The required percentage of passing students will be raised by 5% each year until 50% is reached in the year 2000.[85] Although Texas does not also require progress for LEP students as a group, the state has begun to address the issue by developing a Spanish-language version of the TAAS, the statewide assessment used to rate schools and districts. (See also Figure 5.)

A number of states included aspirational or general statements about including various groups of students in the accountability system. **Puerto Rico** presented typical plan language: "*within the broader context of overall educational reform and improvement*, Puerto Rico's standards will hold *all children* to high levels of expectation, regardless of gender, race, disability or income level."[86]

Other state plans use similar language:

- **Louisiana:** "The goal and objectives for student achievement in Louisiana are for all children, regardless of their socioeconomic status, cultural or linguistic background, exceptionality, or school attended. They are established with the understanding that all students will accomplish more when teachers and administrators hold high expectations and communicate them to the students."[87]
- **New York:** "Every student, including those served by [Title I] programs, will be held to the same high State standards and assessments now being established for all students. . . . All students of both genders and all socioeconomic and racial/ethnic backgrounds will show similar high levels of achievement on State assessment measures."[88]
- **Virginia:** "The Standards of Learning goals and achievement indicators established in this state are applicable to all children, including those populations who attend high-poverty schools and are migrant, neglected or delinquent, homeless, or limited English proficient."[89]

Numerous other state plans contained even more general language that their standards applied to "all children." For example, **Oklahoma** simply stated: "The State Department of Education . . . is committed to the establishment of quality goals and expectations for *all* students."[90] Meanwhile, **North Carolina** proclaimed: "*all* schools will use the state assessment prescribed in the ABC model to determine the current status of all students and how much growth will be expected. . . . Title I and non-Title I students will be expected to perform at the same level."[91] But in none of these cases did the plans adequately or convincingly explain how those aspirations would be realized through their definition of AYP or other aspects of their accountability systems. The Department should not have approved these plans based on such empty assurances.

E. Determining How Much Progress Is Adequate: Requirements for State Definitions of Adequate Yearly Progress

This section reviews the Department's enforcement of the specific component parts of the definition of AYP.[92] When put together, these parts should yield a definition of AYP with reasonable prospects of assuring that no child's, or group of children's, academic failure will be sanctioned under the law. These component parts, and the Department's interpretation of each, include the following:

1. Progress must be *substantial*

Substantial progress means more than minimal progress will be expected of schools and districts from year to year. The Department in its guidance declined to define the term, suggesting, instead, that states elicit feedback from school districts, teachers, parents, and others about what they would consider substantial progress. The Department did affirm in the guidance, however, that "the goal is to move as many students into the proficient and advanced categories as soon as possible."[53]

- The Department initially approved **Idaho**'s plan to define adequate yearly progress during the transitional period as "showing an increase in the percentage of students achieving at proficient or advanced levels" where "proficient" was between the 41st and 80th percentiles on the Iowa Test of Basic Skills and the Tests of Achievement and Proficiency, and "advanced" was above the 81st percentile. One year later, the Department realized that "an increase" was a loose standard which a school could satisfy, for example, if one child moved from the 40th to the 41st percentile. The Department found that this standard "does not seem to agree with the State's position on high standards and expectations for all children or the Federal requirement for what constitutes substantial progress." The Department therefore required the Idaho Department of Education to amend its consolidated plan so that it would "have both high expectations and measures of substantial progress for [at-risk] students."[54]

- Peer reviewers questioned whether **Louisiana**'s one percent "growth criterion" during the transitional period was "substantial" within the meaning of the law.[55] They never received an answer from either the state or the Department. The Department approved Louisiana's procedure without knowing this fundamental fact.

2. Progress must be *continuous*

No matter how much progress has been made, there will always be room for improvement until all children and schools attain the high standards set by the state. The requirement for continuous progress calls upon schools and districts to continue to raise the bar for expected gains, and does not permit the use of a single, low cutoff score in the definition of AYP. By definition, these cutoff scores (e.g., the 50th percentile) thwart efforts to obtain proficiency beyond these levels of performance by virtue of the fact that no consequences flow from failure to make additional improvements. Again, however, the Department declined to define the term "continuous progress," an important concept in the new law.

- **Missouri** is one of the few states whose plan embodies the concept of continuous improvement, although the rate of progress is fairly slight. Its transitional measure of adequate yearly progress requires schools (1) to increase by at least 5% the percentage of children scoring in the top three quintiles, and (2) to decrease by at least 5% the percentage of children scoring in the bottom quintile on the state assessment; however, Missouri raises the bar for the poorest-performing schools by requiring at least a 20% decrease in the percentage of students in the lowest quintiles at schools in which at least 40% of the class group is represented in the fifth quintile. There is no cutoff score, and schools must focus on students at both the bottom and the top of the score distribution.[56]

The majority of states, however, incorporate no such model of continuous progress in their definition of accountability. Instead, many states, like the following, use cut scores, some of them very low:

- **Indiana** does not require either continuous or substantial improvement; rather, its plan establishes a "cut score" for adequate yearly progress. Under its system, a school can be considered to be making adequate progress if it attains a level 2 or

Figure 4. Indiana's Transitional Assessment Performance Levels

	Level 1 (Low-Performing)	Level 2 (Performing)	Level 3 (High-Performing)
Total Reading	School NCE mean more than 1 standard deviation ("SD") below state NCE mean	School NCE less than 1 SD above or below state NCE mean	School NCE mean more than 1 SD above state NCE mean
Total Math	School NCE mean more than 1 SD below state NCE mean	School NCE less than 1 SD above or below state NCE mean	School NCE mean more than 1 SD above state NCE mean
Essential Skills	**0-50%** of students master essential skills	**51-79%** of students master essential skills	**80-100%** of students master essential skills

Source: Indiana Department of Education, *Improving America's Schools: Indiana's Plan for Consolidation*, at 33 (May 1996).

level 3 in two of the three assessment measures, as defined in the table above. (See Figure 4.) In other words, a school makes adequate progress if just over half its students master essential skills![87]

- **New Jersey** sent a letter to the Department in response to conditions placed on approval of its plan with respect to transitional accountability. With respect to elementary grades, the state told the Department that; during the transition period, it would require districts to select from among an approved list of standardized tests to administer in the fourth grade in reading, mathematics, and language arts (writing). Approved tests included the California Achievement Test, Comprehensive Test of Basic Skills (CTBS), Iowa Test of Basic Skills, and the Stanford Achievement Test. The state's standard for school improvement required only 75% of each school's students to exceed a "Minimum Proficiency Level" (MLP) which it set for each of the approved tests. The state set the MLP at very low levels in reading, however, ranging from the 16th percentile on the CTBS, for example, to the 25th percentile on the Science Research Associates (SRA) test. Moreover, it did not require additional progress once 75% of a school's students reached these low levels of performance.[88]

- According to its plan, **West Virginia**'s criterion for the 1996-97 school year and beyond is if a school's aggregate scores in reading and math on the Stanford Achievement Test in *every grade level* fall below the 50th percentile. On its face, this definition suggests that if there is a decline in *several, but not all, grade levels*, the school is not targeted for improvement.[89]

3. **Rates of progress must be *sufficient to achieve* the goal of all children performing at the proficient and advanced levels within a reasonable period of time**

While many experts consider this "reasonable period" to be ten years, once more, the Department declined to stake out a firm position. Specifically, it did not define the term "sufficient to achieve" in its guidance, suggesting only that the definition of AYP should be rigorous enough to achieve this goal "during a student's school career." In determining the amount of progress needed each year, the Department's guidance states:

The process is mainly one of determining what proportion of students are not functioning at the proficient and advanced performance levels, how long the State or district needs to bring them up to those levels, and, therefore, how much progress needs to be made each year (that is, what additional proportion of the students needs to be at those levels in each successive year). Although the amount of progress made each year does not have to be constant, each year's required progress must be continuous and substantial.[60]

But in response to its own question about whether there needed to be a specific time frame by which all Title I children should have reached the proficient and advanced levels, the Department demurred:

The appropriate time frame for all children served under Title I to meet the State's proficient and advanced levels of performance will vary from State to State. Since real reform takes time and States are at different stages in their efforts, each State may have a different time frame but should describe in its State plan how its definition of adequate yearly progress is sufficiently rigorous to achieve that goal during a student's school career.[61]

The following plan, approved by the Department, demonstrates the problem with this loose approach:

- **Rhode Island**, during the transition period, proposed to use a 2% rate for AYP: in order for a school or district to make adequate yearly progress, the percentage of students achieving the cut points in reading, writing, and math had to increase by 2% each year. (The cut points were the 39th percentile on a norm-referenced test in reading and math, and a score of at least 7 out of 12 on a criterion-referenced writing test).[62] At that rate, a school which had begun with 10% of its students in the 39th percentile in year one would have made adequate progress even if only 18% of its students were at the 39th percentile 6 years later. Particularly for low-performing schools, this hardly appears to be the substantial rate of progress contemplated by the law for either the transitional or the final period—a fact which even a reviewer acknowledged.[63] If this indeed were the state's final AYP definition, it surely would not be a rate "sufficient to achieve" the goal of having all children performing at the proficient and advanced levels within a reasonable period of time.

4. Expected rates of progress must also *close the gap* between groups of students

Because some groups of students will be further away from the proficiency levels for all children established by the state, it will take a faster rate of progress for children in these groups to reach the advanced and proficient levels within the reasonable time period. Because the statute explicitly mentions the need to assure that economically disadvantaged and limited English proficient children make AYP, state plans should contain specified rates of progress for at least these two groups of students.

The Department recognized the challenge this new law posed to states to construct viable accountability programs. It worked closely with the Council of Chief State School Officers and representatives of state education agencies and technical experts on the issue of adequate yearly progress.[64] It also retained and dispatched outside experts to several states to help them devise methods of identifying schools that are not making adequate progress. A common model adopted by some of these states following assistance from the Department sets a goal of 100% of all children achieving the proficient standards within ten years. Under this model, each school's annual rate of adequate progress depends on how far from or close to the goal it is.

- One example of this model is **Arkansas**. The state's goal is that 100% of participating students will perform at the "Meeting or Exceeding the Standard" level within ten years. Arkansas defines that level as the 40th percentile on its norm-referenced test and a scale score of 250 on its criterion-

referenced test. Each school computes its distance from the goal of 100% and divides that number by 10 to arrive at its required rate for adequate yearly progress. For example, if a school in year one has 20% of it students scoring at the 40th percentile or above, its AYP rate is 8% per year (100% – 20% = 80%/10 years = 8% per year). The positive feature of this system is that within ten years, all schools should have reached the state standard. The difficulty, however, is that the state has set a single low cutoff score (the 40th percentile) beyond which schools are not expected to progress.[65]

5. Inadequate AYP Definitions

The pattern, regrettably found over and over in state plans, is that states may adopt one aspect of a satisfactory definition of AYP but ignore other essential components. The result is that the overwhelming majority of state definitions are so inadequate that they contemplate leaving thousands of children behind. Most of these plans never should have been approved by the Department; but somehow they were. The following are examples of state plans with definitions of adequate yearly progress that do not satisfy all of Title I's requirements:

- The **Connecticut** system places schools in one of three levels of proficiency based upon an index which averages subject matter scores in math, reading, and writing. Schools at the lowest level for two consecutive years are automatically considered in need of improvement, while schools at level 2 must make an index gain of +1.0 annually. But, at the highest level, no rate improvement is required, even though the index could mask below-par performance in one subject.[66]

- In **Georgia**'s first year under the new law, to avoid being classified as in need of improvement, a Title I school only had to improve by 0.1 NCE on the Iowa Test of Basic Skills. After substantial prodding by the Department, including a warning that the state could not collect funds under the Elementary and Secondary Education Act if deficiencies in its plan were not corrected, Georgia raised the bar.[67] For the 1996-97 school year, schools would be identified as needing improvement if:

  - for schools scoring below the 30th percentile in grades four to eight, the NCE gain was less than 3.0;
  - for schools scoring between the 31st and 40th percentiles in grades four to eight, the NCE gain was less than 1.0;
  - for schools in the 41st to 50th percentile range in grades four to eight, the NCE gain was less than 0.5;
  - schools above the 40th percentile in grades pre-K to three did not show "some gain" for third graders; or
  - less than 75% of a high school's students passed the math portion, and less than 85% passed the English/language arts part of the examination required for graduation.

  According to the most recent plan documents obtained by the Citizens' Commission, Georgia still does not have improvement criteria for the remainder of the transitional period, much less beyond.[68] Like many of these plans, Georgia does not set a high standard that all children are expected to achieve, instead relying upon the NCE, a relative measure of improvement. And although greater gains are expected from lower-performing schools, this system contemplates, at every level of school performance, leaving substantial numbers of children behind.

Even **Texas**, which has one of the strongest accountability systems, does not fully comply with Title I's accountability requirements because it does not yet require progress for LEP students as a group. (See Figure 5.)

The importance of school accountability was underscored in a recent survey on Title I implementation in the 1997-98 school year:

About 20% of the sample mentioned that they use data from their accountability systems for

Figure 5. The Texas Accountability System

Texas has aligned its accountability system with its school rating system. Texas has established four school performance standards: (1) exemplary, (2) recognized, (3) acceptable, and (4) low performing. To make adequate yearly progress, a school/district must achieve the acceptable rating. In 1998, that rating required that 40% of *all* students (excluding special education students) and 40% of *each* subgroup (African American, Hispanic, white, and economically disadvantaged) pass each subject area on the Texas Assessment of Academic Skills (TAAS). (The 40% is an increase over the 35% required in 1997 and the 30% mandated for 1996. The benchmark will be 45% in 1999 and 50% in 2000.) Schools and districts must also have satisfactory attendance (94% or greater) and a dropout rate of 6% or less.

When Texas originally created its assessment, no Spanish version was available and school districts could exempt LEP students from taking the assessment for up to three years. Texas recently developed a Spanish-language assessment, but still does not require inclusion of those scores in the accountability system. The LEP assessment and accountability policy, however, is under revision and probably will require all students to be tested in either English or Spanish, and will include all students' scores in the accountability ratings.

Analysis of TAAS data reveals that Texas schools are getting better at enabling students to demonstrate academic proficiency, as measured by this statewide test. The greatest improvements are among African American, Hispanic, and low-income students and in schools with high concentrations of poor students. In 1996, 875 public schools in Texas had 70% or more of their Title I students passing both the reading and mathematics section of the TAAS, compared with only 24 schools 3 years earlier.

Sources: Texas Education Agency, *Texas Consolidated State Plan*, at 38, 40-42 (Apr. 1996); Texas Education Agency, *1998 Accountability Manual*, at 10, 84 (Apr. 1998); Charles A. Dana Center, University of Texas at Austin, *Texas Schools Make Impressive Achievement Gains* (unpublished, undated paper). See also Texas Education Agency Press Release, *875 Texas Schools Recognized for High Performance of Disadvantaged Students*, <*http://www.tea.state.tx.us/press/titleire.html*> (visited July 22, 1998).

improvement. Those respondents were most often the ones who articulated exactly what progress was being made and what they were doing for those students who were not achieving adequate yearly progress. Most other respondents did not know how adequate yearly progress was defined.[69]

F. School District Accountability

Title I now requires annual progress not only for individual schools, but also for school districts as a whole. State plans, however, were generally deficient on the subject of district accountability. **Michigan**, for example, provided *no* description or explanation of the criteria for identifying school districts in need of improvement. Although peer reviewers noted this deficiency, the Department approved Michigan's plan without any conditions relating to Title I.[70] Still other plans provided unclear explanations of their criteria. For example:

- **Arkansas** supplied the Department with transitional AYP criteria for *schools*. Based upon this information, the Department removed the condition from Arkansas' plan that the state must clarify its criteria for both schools *and* districts. The Department thus either assumed or received oral clarification that the transitional criteria applied at both the school and district levels, but there is nothing written in the file obtained by the Citizens' Commission to confirm that interpretation.[71]

- **Delaware** stated broadly that the "performance of each LEA unit (district or school) will be compared to its own performance in the previous year" and the "performance of Title I students in each

LEA unit will be compared to the performance of non-title I students in that unit. That is, Title I students will be expected to perform at the same level as non-Title I students. LEA units . . . in which Title I students as a group do not match the performance of non-Title I students as a group will have to demonstrate annual progress towards narrowing the gap . . . ." However, the exact measures of improvement and gap reduction for either the transition or final period were not specified.[72]

And some plans were simply inadequate, failing to satisfy Title I's legal requirements:

- While the Department eventually took **Idaho** to task for failing to require substantial progress for schools, the state plan file does not show similar action on Idaho's proposal for identifying districts in need of improvement during the transitional period. In its entirety, Idaho's System for Continuous Improvement was as follows:

  Based on the definitions of adequate yearly progress described above [i.e., any increase in the percentage of students achieving at the proficient or advanced levels], the Title I Office of the SDE [State Department of Education] proposes to identify districts in need of improvement by:
  ** Reviewing district wide ITBS [Iowa Test of Basic Skills] scores for Title I schools from the current testing program in grades 3-11.*

  This vague and indefinite proposal gives little guidance for identifying districts in need of improvement. Moreover, as the Department's own review team observed, the state's "any percent increase is not in keeping with the substantial yearly progress requirement" in the law.[73]

- **Iowa** initially proposed a system focused upon "locally controlled accountability," arguing that "setting standards for student performance from a point that is external to the district diminishes the district's responsibility rather than enhances it." The Department approved Iowa's plan only conditionally, in part because it needed to clarify its criteria for identifying schools and LEAs in need of improvement. When Iowa provided a more detail to the Department on its district-by-district accountability approach, it reaffirmed the state policy that "[f]or all students, including Title I students, the desired level of student performance is set by the local community . . . ."[74]

- **New Jersey** did not pledge, as required by law, to make an annual determination of whether districts are making adequate progress. Instead, the state evaluates districts for certification every *seven years*! The state's review, based upon 33 indicators (including test scores, attendance rates, facilities, and finances), is far too infrequent. Families in failing districts should not have to wait seven years before intensive on-site monitoring, technical assistance, and other remedies are employed to improve the district.[75]

But a few states came much closer to fulfilling the spirit and letter of the law:

- After some prompting by the Department, **Alaska** outlined the following criteria for identifying districts in need of improvement during the transition period:

  - "fewer than 40% of the district's students are proficient on the State assessments";
  - "fewer than 40% of the students in Title I schools are proficient on the State assessments";
  - "40% or more of the district schools identified for improvement remain in school improvement status for a three-year period"; or
  - "the district does not have an approved plan of service for Federal Programs or fails for a period of six months to correct a non-compliance finding found by a State team reviewing or monitoring federal programs."[76]

- **Florida** met the bare minimum of Title I's requirements. It proposed a simple, but adequate, plan

for identifying districts in need of improvement: "An LEA will be identified for school improvement provisions under Title I if, after two consecutive years beginning with 1995-96, the majority of schools have not made adequate progress."[77]

Given that most state plans provide little or no guidance for identifying districts in need of improvement, it is not surprising that few states have in fact completed the identification process. A preliminary review by the Citizens' Commission of states' initial Title I performance reports for the 1996-97 school year shows the following:

- Many states have not yet identified districts needing improvement, according to "performance reports" filed with the Department in the spring of 1998, including **Alaska**, **Colorado**, **Indiana**, **Ohio**, **Oregon**, **Rhode Island**, **South Carolina**, and **South Dakota**, as well as the **District of Columbia**. Some of these states reported that they were still in the process of identifying schools in need of improvement and could not identify districts until that process was completed. Others reported that they would not begin the identification process until the 1997-98 school year.

- Some states, including **California**, **Georgia**, **New Hampshire**, **New Mexico**, **Vermont**, and **Washington**, left blank the portion of the report requesting the number of districts identified for improvement. For these states, it is unclear whether their identification process is incomplete, or whether they concluded that no district needs improvement.

- Several states, including **Alabama**, **Florida**, **Maryland**, **North Carolina**, **Utah**, and **West Virginia**, reported that *none* of their districts should be identified for improvement.

For those states which, as the law requires, have identified districts in need of improvement, Title I requires states to give those districts technical assistance. This issue is discussed more fully in the following chapter on Capacity-Building.

Endnotes

[1] Such other resources include early childhood education, smaller class size, and qualified teachers. See, e.g., House Committee on Education and Labor, 102d Congress, 1st Session, *A Report on Shortchanging Children: The Impact of Fiscal Inequity on the Education of Students at Risk*, at 25-32 (1991) (prepared by William L. Taylor and Dianne M. Piché). See also Sam Stringfield *et al.*, *Urban and Suburban/Rural Special Strategies for Educating Disadvantaged Children: Findings and Policy Implications of a Longitudinal Study* (Washington D.C.: U.S. Department of Education 1997) (describing how Chapter 1 program resources had been best used to enhance student learning); Sam Stringfield and Rebecca Herman, "Research on Effective Instruction for At-Risk Students: Implications for the St. Louis Public Schools," 66 *Journal of Negro Education* 258 (Summer 1997) (detailing promising programs, reform designs, and school components that have been found to support or enhance the achievement of disadvantaged children).

[2] See U.S. Department of Education, *Guidance on Standards, Assessments, and Accountability*, at 76 (Mar. 1997) (hereinafter "*Standards Guidance*") ("The program improvement provisions of the 1988 law advanced accountability of the former Chapter 1 program by focusing on the outcomes of children in Chapter 1 programs, not just on what happened to Chapter 1 dollars.").

[3] See Public Law No. 100-297, 102 Stat. 150 (outlining Chapter 1 § 1012 requirements for state and district assurances, and local applications), 163 (describing Chapter 1 § 1019 requirements for state and local evaluations of program effectiveness), 164 (detailing Chapter 1 § 1020 requirements for state program improvement plans), 191 (describing Chapter 1 § 1435 evaluation procedures) (1988); 54 Federal Register 21,756, 21,764, 21,766, 21,773-21,775 (1989) (describing Chapter 1 regulatory requirements for evaluation and program improvement). Many states in practice required achievement gains of only one normal curve equivalent (NCE) per year per school, following federal guidance which stated:

> ***Q24. How are aggregate performance scores used with respect to program improvement?***
> *A. No gain or a decline in aggregate performance scores in the subject that is the primary focus of the Chapter 1 program, measured according to the national standards for evaluation, causes a school to be identified for program improvement. . . .*
> ***Q25. What is meant by no gain or a decline in aggregate achievement?***
> *A. In terms of NCEs, no change or a loss in NCEs.*

U.S. Department of Education, *Chapter 1 Policy Manual: Basic Programs Operated by Local Educational Agencies*, at 157 (Washington, D.C.: U.S. Department of Education undated). For an explanation of NCEs, see *infra*, note 4.

[4] NCEs are a statistic similar to percentiles with a mean of 50 and a standard deviation of about 21. The idea is

> *that students should gain in percentile rank from year to year. . . . For example, a student who scored at the 50th percentile in the third grade and again at the 50th percentile in the fourth grade would be said to have made 'no gain' even though they have in fact gained one grade equivalent in one year. A student who scores at a lower percentile rank is said to have made a negative gain.*

Robert Slavin, "Chapter 1: A Vision for the Next Quarter Century," 72 *Phi Delta Kappan* 586 (1991). See also Figure 1, Bell-Shaped Curve, in Chapter IV, Assessments.

[5] See Commission on Chapter 1, *Making Schools Work for Children in Poverty*, at 6, 8, 77-86 (Washington, D.C.: Commission on Chapter 1/American Association for Higher Education 1992) (recommending revision of Chapter 1 to include an outcomes-based accountability system). See also U.S. Department of Education, *Rein-*

venting Chapter 1: The Current Chapter 1 Program and New Directions (*Final Report of the National Assessment of the Chapter 1 Program*), at 158-166 (Washington, D.C.: U.S. Department of Education 1993) (describing 1988 amendments to include a program improvement process, and the general lack of implementation of these provisions under Chapter 1).

[6] See Title I of the Elementary and Secondary Education Act (ESEA) §§ 1111(b), 1116(c)-(d), 1117, 20 U.S.C.A. §§ 6311(b), 6317(c)-(d), 6318 (Supp. 1998); U.S. Department of Education, *Standards Guidance*, *supra* note 2, at 69-75, 84.

[7] See ESEA §§ 1111(b)(6)-(7), 20 U.S.C.A. §§ 6311(b)(6)-(7) (Supp. 1998); 34 C.F.R. §§ 200.4(d),(e); U.S. Department of Education, *Standards Guidance*, *supra* note 2, at 69.

[8] ESEA § 1111(b)(2)(B), 20 U.S.C.A. § 6311(b)(2)(B) (Supp. 1998) (emphasis added).

[9] ESEA § 1111(b)(3)(I), 20 U.S.C.A. § 6311(b)(3)(I) (Supp. 1998).

[10] ESEA § 1116(d)(1), 20 U.S.C.A. § 6317(d)(1) (Supp. 1998).

[11] ESEA § 1116(a), 20 U.S.C.A. § 6317(a) (Supp. 1998).

[12] ESEA §§ 1116(c)-(d), 20 U.S.C.A. §§ 6317(c)-(d) (Supp. 1998).

[13] ESEA § 1116(c)(3)(A)(i), 20 U.S.C.A. § 6317(c)(3)(A)(i) (Supp. 1998).

[14] ESEA § 1116(c)(5)(B)(i), 20 U.S.C.A. § 6317(c)(5)(B)(i) (Supp. 1998).

[15] ESEA § 1116(d)(6)(B), 20 U.S.C.A. § 6317(d)(6)(B) (Supp. 1998).

[16] ESEA §§ 1111(b)(2),(7), 20 U.S.C.A. §§ 6311(b)(2),(7) (Supp. 1998).

[17] U.S. Department of Education, *Elementary and Secondary Education Act (ESEA) as amended by the Improving America's Schools Act of 1994 (IASA) Final Consolidated State Plan (Section 14302 of the ESEA)*, at 7, App. A (undated) (hereinafter "*Plan Instructions*") (providing instructions and criteria for final state plans).

[18] Minnesota Department of Children, Families and Learning, *Minnesota Consolidated Application*, at 13 (1996); U.S. Department of Education, *Summary of Peer Review State of Minnesota* (May 31, 1996).

[19] U.S. Department of Education, *Summary of Peer Review State of South Carolina*, at 2 (undated). South Carolina did submit at least one memorandum providing additional information on the consolidated plan, including an example of a situation requiring school improvement, and may have provided oral clarification, but the written record does not reflect the submission of clear transitional improvement criteria.

[20] North Dakota Department of Public Instruction, *North Dakota Consolidated State Plan*, at 28 (May 1996) (stating only that "[d]uring this transitional period, locally developed multiple-measures approved by the State will be used to determine adequate progress. Schools that are unable to show[] adequate yearly progress in reading or math for two consecutive years will be identified for school improvement.").

[21] State of Delaware Department of Public Instruction, *Ensuring Student Success: The Delaware Consolidated Plan for School Improvement*, at 12, 30 (May 1996) (discussing generally plans to define adequate yearly progress and need for a school review process, without providing criteria for identifying schools in need of improvement).

[22] Washington Department of Public Instruction, *Washington State Final Consolidated State Plan*, at 18-19 (May 1996); U.S. Department of Education, *Summary Comments from Peer Reviewers: Washington*, at 2 (July 30, 1996). However, the state did estimate that under these criteria up to one-half of its districts could be targeted for improvement. Washington Department of Public Instruction, *supra*, at 19.

[23] West Virginia Department of Education, *West Virginia Consolidated State Plan*, at 9 (May 1996); memorandum from Yvonne Fawcett, Assistant Director Instructional Services, West Virginia Department of Education, to Grace Ross, U.S. Department of Education, re: Conditions for Consolidated Plans: Standards and Assessments (June 2, 1997).

[24] The University of the State of New York and the State Education Department, *New York State's Consolidated Plan for IASA*, at 18-19, App. C (May 1996).

[25] See, e.g., S. Report No. 103-292, at 2 (1994): "It is the committee's intent that the high quality academic standards that will be used for accountability under the title I program be the same as those for all children so that the same expectations are placed on title I Part A students as for other students."

[26] Letter from the Title I Reform Network to Mary Jean LeTendre, Director, Compensatory Education Programs, U.S. Department of Education, at 7 (May 31, 1995).

[27] "U.S. Education Department Will Scrutinize States' Accountability Efforts, LeTendre Warns at ESEA Conference," 1 *Title I Monitor* 1 (Oct. 1996).

[28] See U.S. Department of Education, *Draft Guidance on Standards, Assessment, and Accountability*, at 46-48 (Oct. 1, 1996) (hereinafter "*Draft Standards Guidance*").

[29] U.S. Department of Education, *Standards Guidance*, *supra* note 2, at 58 (emphasis in the original).

[30] The cover letter from the state superintendent to local superintendents which accompanied the guidelines stated:

> *[t]he district's responsibility is to set specific performance improvement goals for all its schools. In the state model, we suggest that the district set as its goal that nine out of ten students meet or exceed the grade-level standards adopted by the local board within ten years. . . . We further recommend that districts identify for special attention those schools in which fewer than 40 percent of students are meeting standards.*

Letter from Delaine Eastin, California Superintendent of Public Instruction, to District and County Superintendents (May 9, 1997).

The guidelines themselves provide that schools will be identified "as candidates for program improvement" based on an initial statewide standard of fewer than 40% of students meeting or exceeding grade level standards. Only beginning in the 1998-99 school year will schools be required to make adequate yearly progress for two consecutive years. Districts will not be identified for improvement until the Fall of 2000. A district will be so identified if it has "failed to move at least one-half of its program improvement schools out of program improvement in three years." California Department of Education, *Guidelines for Identifying IASA, Title I, Program Improvement Schools During the Period of Transitional Assessment*, at 2-3 (May 1997).

[31] Colorado Department of Education, *Colorado Consolidated State Plan*, at 14 (May 15, 1996); Colorado Department of Education, *Colorado Consolidated State Plan Title I Modifications*, at 1 (Mar. 12, 1997); letter from Virginia Plunkett, Title I State Director, Colorado Department of Education, to Grace Ross, Title I Program, U.S. Department of Education (Apr. 25, 1997); U.S. Department of Education, *Colorado Standards and Assessments Conditions* (undated). The letter from Virginia Plunkett, *supra*, states that Title I staff at the Colorado Department of Education review districts' proficiency levels "to assure high expectations," but provides no details on state procedures or criteria for this review.

[32] Delaware Department of Public Instruction, *Delaware State Consolidated Application Revisions (Second Revision)*, at 13-14 (June 11, 1997).

[33] H.R. 6, 103d Congress (1994).

[34] ESEA § 1111(b)(2)(B)(i), 20 U.S.C.A. § 6311(b)(2)(B)(i) (Supp. 1998).

[35] S. Report No. 103-292, at 9 (1994) ("The committee does not intend . . . for States to develop a lower standard of what constitutes adequate progress for schools and LEAs [local educational agencies] serving title I students than they would for all students in all schools and LEAs nor does it intend for a school or LEA to be deemed to have made adequate progress if its overall student performance is acceptable but the performance of disadvantaged students served is not satisfactory.").

[36] See, e.g., U.S. Department of Education, *Draft Standards Guidance*, *supra* note 28, at 45-46.

[37] Letter from the Title I Network to Marshall Smith, Under Secretary/Acting Deputy Secretary, U.S. Department of Education (Dec. 20, 1996).

[39] Letter from Marshall Smith, Acting Deputy Secretary, U.S. Department of Education, to Dianne Piché (Mar. 13, 1997) (responding to letter written on behalf of Title I Reform Network). The full text of Mr. Smith's response, in relevant part, is as follows:

> *With respect to your concerns that the guidance does not require States to include economically disadvantaged and limited-English proficient children in its definition of adequate yearly progress, we respectfully disagree. The draft guidance, like the Title I statute, clearly requires that poor and limited-English proficient students be included in the population whose achievement levels are being used to determine if the definition of adequate yearly progress is being met. . . .*
>
> *The Title I statute does not require States to examine separately the progress of selected groups in determining adequate yearly progress. However, the statute does clearly indicate that adequate yearly progress must be defined to achieve the goal of all Title I children, "particularly economically disadvantaged and limited-English proficient children," meeting the State's proficient and advanced levels of performance. We have added language in the draft guidance emphasizing this requirement and strongly encouraging States to define adequate yearly progress in ways that would hold school districts and schools accountable for ensuring that the lowest-achieving children—be they economically disadvantaged, limited-English proficient, or another special population—are making continuous and substantial progress.*

Id.

[40] U.S. Department of Education, *Standards Guidance*, *supra* note 2, at 63-64.

[41] U.S. Department of Education, *Reviewer Guide for Peer Reviewers for Final Consolidated State Applications under the Elementary and Secondary Education Act, Parts I-III and Summary Form*, at 4, 9 (May 16, 1996).

[42] U.S. Department of Education, *Reviewer Guide for Panel Chairs and Other RST Members for Final Consolidated State Applications Under the Elementary and Secondary Education Act, Parts I-IV and Summary Form*, at 38 (May 16, 1996).

[43] U.S. Department of Education, *Plan Instructions*, *supra* note 17, at App. A.

[44] Alaska Department of Education, *Consolidated Plan—Additional Information*, at 2-3 (June 1996).

[45] Arizona Department of Education, *Final Consolidated State Plan*, at 61, App. A (May 20, 1996) (emphasis in original).

[46] Texas Education Agency, *Texas Consolidated State Plan*, at 40-41 (Apr. 1996).

[47] Puerto Rico Department of Education, *Commonwealth of Puerto Rico Consolidated State Plan*, at 7 (May 1996) (emphasis in original).

[48] Louisiana Department of Education, *Consolidated State Plan for IASA Programs*, at 16 (May 1996).

[49] The University of the State of New York and the State Education Department, *supra* note 24, at 10.

[50] Virginia Board of Education, *Virginia's Consolidated State Application*, at 20 (May 1996).

[51] Oklahoma State Department of Education, *Final Consolidated State Plan Application*, at App. B 1 (May 1996) (emphasis in original).

[52] Public Schools of North Carolina Department of Public Instruction, *The North Carolina IASA Consolidated Plan 1996-99*, at 10 (May 1996) (emphasis in original).

[53] Several of the illustrative examples concern states' transitional criteria for school improvement, rather than their adequate yearly progress (AYP) under their final assessments. These examples are pertinent because several AYP requirements—such as those requiring substantial and continuous progress—apply equally to transitional criteria. Further, states' decisions regarding transitional criteria may reflect what their final AYP may be, and indeed several states label their AYP transitional when, in fact, they already are using their final assessment (having no plans to develop other tests).

[54] U.S. Department of Education, *Standards Guidance*, *supra* note 2, at 61.

[54] State of Idaho Department of Education, *Consolidated State Plan for Idaho Schools*, at 5 (May 1996); U.S. Department of Education, *Idaho Integrated Review Report*, at 15-16 (Jan. 31, 1997).

[55] U.S. Department of Education, *Summary of Peer Review Final Consolidated Application Under Improving America's Schools Act: Louisiana*, at 2 (June 12, 1996).

[56] Missouri Department of Elementary and Secondary Education, *Consolidated State Plan for Federal Programs: State of Missouri*, at 13-14 (May 1996).

[57] Indiana Department of Education, *Improving America's Schools: Indiana's Plan for Consolidation*, at 33 (May 1996).

[58] Letter from Jeffrey V. Osowki, Assistant Commissioner, State of New Jersey Department of Education, to Gerald N. Tirozzi, Assistant Secretary, U.S. Department of Education (May 5, 1997) (enclosing State of New Jersey Department of Education, *New Jersey Consolidated State Plan Clarifications Requested by the U.S. Department of Education*, at 2, 5, Att. E, Att. F).

[59] Memorandum from Yvonne Fawcett, *supra* note 23.

[60] U.S. Department of Education, *Standards Guidance*, *supra* note 2, at 61.

[61] *Id.*

[62] Rhode Island Department of Elementary and Secondary Education, *Transitional Standards for Student Achievement and the Adequate Yearly Progress of Schools and Districts* (Mar. 12, 1997).

[63] "Even though RI says that a 2% increase in student achievement by subject areas is higher than is currently being made, 2% still seems low. This sounds as if it would take a very long time frame to reach the goal of 95% of the students being proficient." U.S. Department of Education, *Rhode Island Standards and Assessment Conditions* (undated).

[64] Council of Chief State School Officers, *Adequate Yearly Progress in Title I of the Improving America's Schools Act of 1994: Issues and Strategies* (Oct. 1996).

[65] Arkansas Department of Education, *Adequate Yearly Progress* (June 6, 1997).

[66] Connecticut State Department of Education, *Final Consolidated State Plan (Section 14302 of the Elementary and Secondary Education Act (ESEA))*, at 7 (May 14, 1996).

[67] "Title I Leverages Higher State Standards for All Students," 2 *Title I Monitor* 10 (Aug. 1997).

[68] Georgia Department of Education, *The Georgia Final Consolidated Plan Under the Elementary and Secondary Education Act as amended by the Improving America's Schools Act of 1994*, at 22, 24 (Sep. 1997).

[69] Shelley H. Billig, "Implementation of Title I of the Improving America's Schools Act: A 1997-1998 Update," 3 *Journal of Education for Students Placed At Risk* 209, 216 (1998).

[70] See Michigan Department of Education, *Michigan Consolidated State Plan* (Mar. 1996); U.S. Department of Education, *Michigan Consolidated Plan Peer Review*, at 2 (undated).

[71] Arkansas Department of Education, *Consolidated State Plan for Improving America's Schools Act*, at 12 (undated).

[72] See State of Delaware Department of Public Instruction, *supra* note 21, at 12-13; Delaware Department of Public Instruction, *supra* note 32, at 13.

[73] State of Idaho Department of Education, *supra* note 54, at 5. See also U.S. Department of Education, *supra* note 54, at 15-16.

[74] Iowa Department of Education, *Iowa's Consolidated Plan*, at 19 (May 8, 1996); Iowa Department of Education, *The Iowa Model for Continuous School Improvement*, at 1 (June 17, 1997).

[75] Letter from Jeffrey V. Osowki, *supra* note 58.

[76] Alaska Department of Education, *Addendum to Alaska Consolidated State Plan*, at 15 (May 15, 1997).

[77] Florida Department of Education, *Florida's Consolidated Application for Improving America's Schools Act*, at 65 (May 1996).

Chapter VI

Capacity-Building

I. The Need for Capacity-Building in Title I Schools

In 1992, after national achievement data indicated that the progress minority students had made had come to a halt at the end of the 1980s while the black-white achievement gap remained substantial,[1] educators and advocates for children demanded that Congress take swift and bold action to help high-poverty schools improve their capacity to deliver a quality education. Without improved capacity, many questioned the ability of Chapter 1 to work any significant improvement in educational outcomes.

Capacity, in an educational context, is used to describe the resources—human, material, and technical—that school authorities have available for educating students. Under Chapter 1, many high-poverty schools lacked the capacity to provide an adequate education. In states with inequitable school financing systems, schools in poor areas often did not have the means to provide basic educational services that would have made a difference for disadvantaged students—services such as preschool and other early childhood programs, all-day kindergarten, reading programs in the early grades, small classes, and trained teachers.[2] Students in high-poverty schools also were far more likely to be attending schools needing significant repairs and to lack access to the Internet.[3] In many high-poverty schools, the Chapter 1 allocation did not even come close to mitigating the spending gap between such schools and the state's well-funded suburban and other more advantaged schools.[4] In addition, few educators seriously believed that the average of 20 to 25 minutes per day of instruction typically provided in a Chapter 1 pull-out program could begin to compensate for the deficiencies often found in schools' regular programs.

In December 1992, the Commission on Chapter 1, an independent commission created to recommend improvements in the Chapter 1 program, called on Congress to include a comprehensive package of "help and capacity-building" measures in the 1994 reauthorization.[5] The Commission on Chapter 1, along with many others, recognized the pressing need to upgrade the ability of high-poverty schools to deliver high-quality instruction. As one expert on educating disadvantaged children wrote:

> *Chapter 1 could magnify its impact substantially if a portion of Chapter 1 funds could be devoted to improving curriculum, instructional practices, classroom management skills, assessment practices, and other skills of the regular classroom teachers with whom Chapter 1 students spend most of their day, and to enable schools to engage in schoolwide improvements in organization, professional development, and parent involvement.*[6]

Moreover, if schools were to be held accountable for the substantial improvements in student achievement that were urged (and eventually enacted in the new law), considerations of fairness dictated that they should be given considerable assistance and sufficient resources to develop or improve capacity—i.e., to obtain the staff training needed to teach to higher standards, develop effective school plans, obtain and understand achievement patterns, and overcome other barriers to high achievement, including the effects of inequitable state systems of school finance.

The Commission on Chapter 1 and others thus recommended:[7]

- **A Set-Aside for Professional Development.** Sufficient Chapter 1 resources should be set aside for staff development and school improvement programs at both the state and local levels. Schools should be required to spend 10% to 20% of their allocation on professional development tied to state content standards.

- **Interdistrict Comparability.** To begin to address inequitable school financing, states, as a precondition for receiving federal funds, should be required to certify that important services for disadvantaged children were comparable in districts across the state. Rather than require a complete overhaul of school financing schemes—arguably a job for state officials and not the federal government—states should be required to make more equitable a limited range of "essential educational services" deemed by Congress to be the most vital to assuring equal opportunity for disadvantaged children. Such services would include, for example, preschool opportunities, core course offerings, adequate class sizes, and measures of teacher quality.

- **Revise Funding Formula.** Congress should revise the Chapter 1 funding formula to direct resources to where the most compelling need for educational improvement exists: high-poverty schools and districts.

- **Enhanced State Role in Developing School Capacity.** States should be provided with federal resources to enhance their own capacity to assist failing schools, as well as to identify, support, and disseminate successful school improvement models to Chapter 1 schools.

- **Parent Empowerment.** Each participating school should implement a parent training and involvement program designed to empower parents to make important contributions to their children's education.

- **Bonuses for Board-Certified Teachers.** To entice good teachers to teach in high-poverty schools, teachers certified by the National Board for Professional Teaching Standards who teach in these schools should be awarded bonus pay by the federal government.

- **Opportunity to Learn Standards.** Also known as "delivery" standards, "opportunity to learn" (OTL) standards, as originally conceived by the National Council on Education Standards and Testing, refer to inputs needed to ensure students have a fair and equitable chance to master new, higher academic standards.[8] These inputs typically would include up-to-date books and technology; a challenging rather than a "dumbed-down" curriculum; instructional strategies that work with children of diverse backgrounds instead of a steady diet of drills and worksheets; teachers who are certified in their field instead of uncertified and substitute teachers; and reasonable class sizes. While not necessarily measured in terms of spending equity, OTL proponents recognized that, in many states, learning conditions for large numbers of poor and minority children did not come close to those provided for other children. The voluntary Goals 2000 program, as originally enacted, called on each participating state to develop standards for the resources the state deemed necessary to ensure that all students had a fair opportunity to achieve the knowledge and skills contained in the content and performance standards. Proponents of the OTL approach sought to include comparable requirements in Title I.

II. What the New Title I Requires: Some Measures to Help Poor Schools

Several of the proposals to equalize learning conditions in poor and non-poor schools did not survive the reauthorization process. For example, Congress ultimately rejected proposals to include "opportunity

to learn" standards in Title I, leaving no strong mechanism in the new law to address comprehensively the gross inequities of many states' school financing systems. Nonetheless, the new Title I law does contain, for the first time, three sets of provisions which, if carried out, should bring about real improvements in the quality of education provided in many participating schools. These are: (1) an explicit state duty to help build school capacity; (2) provisions for professional development; and (3) state support for schoolwide programs and schools in need of improvement. Two additional measures, a revised funding formula to target more resources to the highest poverty schools and districts as well as greater support for parent involvement, should also help improve educational quality.

A. State Duty to Help Develop School Capacity

Title I, section 1111(b)(8), now requires each state, in its plan to the U.S. Department of Education ("Department"), to describe:

> *(A) how the State educational agency will help each local educational agency and school affected by the State plan develop the capacity to comply with each of the requirements of . . . this title [relating to school improvement, components of schoolwide programs, and components of targeted assistance programs] that is applicable to such agency or school; and*
>
> *(B) such other factors the State deems appropriate to provide students an opportunity to achieve the knowledge and skills described in the challenging content standards adopted by the State.*[9]

Originally, the "other factors" in subparagraph (B) included "opportunity-to-learn standards or strategies developed under the Goals 2000: Educate America Act," but that language was deleted in 1996 in the conservative fervor to eliminate all OTL references from federal education law.[10] Despite the elimination of OTL language, it is apparent even from a partial listing of schoolwide and targeted assistance program requirements that Congress has retained in Title I a detailed specification of opportunities to learn. Beyond this, there is no question that given the absence of these program requirements in many schools, the state's responsibilities for capacity-building are substantial. (See Figure 1, Figure 2.)

B. Professional Development

In the reauthorization of Title I, Congress manifested a strong desire to see increased resources devoted to teachers' professional development. As a result, all Title I schools must now dedicate sufficient resources to the "high quality" professional development needed "to enable all children to meet the State's student performance standards."[11] Title II (formerly the Dwight D. Eisenhower Professional Development Program) provides an additional funding stream for professional development, part of which is targeted to Title I schools.[12] Some of the Title I provisions apply only to schools in need of improvement, while others apply to all Title I schools.

1. Requirements for All Title I Schools

A new section of the law requires that all participating school districts devote sufficient resources in Title I schools to provide "high-quality professional development that will improve the teaching of the academic subjects, consistent with the State content standards, in order to enable all children to meet the State's student performance standards."[13] While Congress rejected calls for a set-aside for all Title I schools, the law clearly contemplates a considerable investment in professional development, while leaving the amount to be devoted and the source of funds within the discretion of local educators.

For all Title I schools, the new law requires professional development:

- to be "designed by principals, teachers, and other school staff" in participating schools;

Figure 1. Schoolwide Capacity Requirements

The breadth of states' capacity-building responsibilities is illustrated by how they must help local educational agencies comply with schoolwide program requirements. Under Title I § 1114(b), schoolwide program components include, but are not limited to:

- "effective instructional strategies . . . that . . . increase the amount and quality of learning time, such as providing an extended school year and before- and after-school and summer programs and opportunities, and help provide an enriched and accelerated curriculum";
- strategies that "address the needs of all children in the school . . . which may include . . . counseling, pupil services, and mentoring services; . . . college and career awareness and preparation . . . job placement services, and innovative teaching methods which may include applied learning and team teaching strategies";
- "[i]nstruction by highly qualified professional staff";
- "professional development for teachers and aides, and, where appropriate, pupil services personnel, parents, principals, and other staff to enable all children in the school to meet the State's student performance standards";
- "[p]lans for assisting preschool children in the transition from early childhood programs, such as Head Start, Even Start, or a State-run preschool program, to local elementary school programs"; and
- "[a]ctivities to ensure that students who experience difficulty mastering any of the standards required . . . during the course of the school year shall be provided with effective, timely, additional assistance . . . ."

- to support districtwide and schoolwide Title I plans;
- to be aligned with State content standards and focused on improving achievement; and
- to address racial and gender bias in instruction.[14]

In addition, states must review districts' professional development plans to verify that they comply with the new law, and take corrective action when plans are not in compliance.[15]

2. Requirements for Schools in Need of Improvement

These are schools identified by the district as not making adequate yearly progress or, if the state is using a transitional assessment, falling below the standard set by the state on that assessment.[16] Section 1116 of the amended Title I requires these schools to devote the equivalent of 10% of their Title I allocation, over a two-year period, to professional development activities.[17] These activities should be part of the school's improvement plan and should focus on helping the staff improve student performance on Title I assessments. Decisions about how to use these funds must be made at the school level by the principal, teachers, and other school staff. Schools may use Title I funds, or funds from other sources, for professional development, so long as they meet the minimum funding and other requirements in this section of the law.

Figure 2. Targeted Assistance Program Capacity Requirements

As with schoolwide programs, states have substantial capacity-building responsibilities with respect to Title I targeted assistance programs. Under Title I § 1115(c), targeted assistance school program components include, but are not limited to:

- "effective instructional strategies that—(i) give primary consideration to providing extended learning time such as an extended school year, before- and after-school, and summer, programs and opportunities; (ii) help provide an accelerated, high-quality curriculum, including applied learning; and (iii) minimize removing children from the regular classroom during regular school hours for instruction";
- coordination with, and support from, the regular education program, which may include "(i) counseling, mentoring, and other pupil services; (ii) college and career awareness and preparation . . . (iii) services to prepare students for the transition from school to work . . . (iv) services to assist preschool children in the transition from early childhood programs to elementary school programs";
- "instruction by highly qualified staff";
- professional development; and
- "strategies to increase parental involvement, such as family literary services."

C. State Support for Schoolwide Programs and Failing Schools

Title I now calls on each state to establish "a statewide system of intensive and sustained support and improvement" for Title I schools. The state support system must include "school support teams," a model distinguished school, and a corps of distinguished educators. This system may be funded at least partially with Title I funds, including funds specifically appropriated for school improvement. The law also contemplates that such systems will be assisted by a network of federally supported technical assistance centers.[18]

In establishing and administering such systems, states must pay particular attention to schoolwide programs and schools identified as needing improvement.[19] In fact, with respect to schools in need of improvement, the law requires that the state make available, upon request, the technical assistance needed by any school or school district that is failing to meet state performance goals.[20] With respect to schoolwide programs, the law intends the system to provide the help schools need in undertaking the whole-school reforms encouraged under the new law. Such assistance has taken on particular importance given Congress's decision in 1994 to lower the poverty threshold for eligibility from a 75% to a 50% school poverty rate, thereby significantly increasing the number of schools eligible to use their Title I funds on a schoolwide basis.

D. Targeted Grants

Congress heeded the call of the Clinton Administration and advocacy groups to revise the allocation formula to direct more Title I dollars to the highest poverty districts and schools. The amended Title I acknowledges that "the most urgent need for educational improvement is in schools with high

concentrations of children from low-income families" and that "educational needs are particularly great for low-achieving children in our Nation's highest poverty schools . . . ."[21] To meet these needs, Congress supplemented the "basic grants" and "concentration grants" (which provide additional funds to districts with higher numbers or percentages of low-income children—but set a low threshold for "high") with "targeted grants" that would give larger per-poor child grants to local educational agencies with more poor children.[22]

E. Parent Involvement

Title I, as amended in 1994, requires districts and schools to implement "programs, activities, and procedures" for involving parents in Title I programs, funded by setting aside at least 1% of their Title I grant allocation.[23] Although most state plans contained some description of plans for parent and community involvement, the duty to engage parents lies primarily at the local level. Because implementation of these provisions is not an issue at the federal level, it is not analyzed in this report.

III. The U.S. Department of Education's Enforcement Record and State Compliance

A. State Duty to Build School Capacity

All Title I grant recipients have a legal responsibility to build school capacity. Further, the section 1111(b)(8) capacity-building requirement is linked to specific obligations for schoolwide programs and targeted assistance schools that, in practice, serve as OTL requirements, even though Congress stripped the OTL language from Goals 2000 and Title I in 1996.[24] Yet the Department has chosen to minimize this capacity-building requirement by providing little or no explanation of this responsibility.

Both the draft regulations circulated during the negotiated rulemaking process and the final regulations promulgated in July 1995 contained the language that state plans "shall describe" how the state would help each school district develop the capacity to comply with relevant portions of sections 1112, 1114, and 1115.[25] This regulatory language, however, merely recites, virtually verbatim, the language of the statute, and thus provides no additional direction to recipients. Nor did the Department choose to include any specific mention of this capacity-building requirement in its *Guidance on Standards, Assessments, and Accountability*, or in any other section of the Title I guidance, giving instead only general guidance on capacity.

Moreover, the Department dropped its own regulatory requirement for capacity when it came time to issue instructions to plan writers and reviewers. It chose not to make compliance with the section 1111(b)(8) capacity provision a condition for approval of states' plans (and hence, the continued flow of Title I dollars to the states) although it could have, and should have, done so. After the Department published its proposed instructions for state plans,[26] education advocates recommended that "[a]t a minimum, each of the components of the plan required by Section 1111(b) (including content and performance standards, assessments, adequate progress, and *capacity*) must be included in the consolidated plan and described with the specificity required by the statute."[27] The Department subsequently elaborated upon requirements for standards, assessments, and adequate yearly progress in its final plan guidance, but it did not similarly detail capacity requirements.[28]

In short, despite explicit statutory language, and despite commenters' recommendations on proposed plan criteria, the Department failed to request that states describe specifically how they would comply with the capacity provision in the plans they submitted to the Department for approval in 1996. More specifically, the instructions did not ask states to explain how they proposed to enable Title I schools and districts to carry out their new duties under sections 1114 (for schoolwide programs) and 1115 (for

targeted assistance programs). (See Figure 1, Figure 2, *supra*.)[29]

The general language in the plan instructions, while encompassing capacity issues, did not require states to focus upon section 1111 capacity requirements *per se*.[30] And although the Department emphasized that "approval of a consolidated plan does not alter the obligation of an SEA [state educational agency] and its grantees to continue to comply with *all* programmatic requirements of each program,"[31] without details in the plan, the Department would have little information on which to evaluate states' compliance.

By failing to demand such details, the Department undercut its own acknowledgment of the importance of adequate resources:

> *A major purpose of federal education assistance is to promote both excellence and equity by providing additional resources to help historically underserved groups of children reach the goals for academic achievement that their state establishes for all children. An additional purpose is to provide state and local educational agencies (LEAs) with resources that will help them address areas of particular concern, such as the need for high quality and sustained professional development . . . .*[32]

Similarly, the Department never asked its peer reviewers to check the proposed plans for specific evidence of compliance with the capacity-building provision before the reviewers made their recommendations to Department staff regarding approval. Like the instructions to states, the guide that the Department prepared in May 1996 for peer reviewers discusses capacity only in vague, general terms, and does not focus reviewers' attention on how states have addressed the specific needs of schools with respect to their duties under sections 1114 and 1115.[33]

Ultimately, the Department never asked, nor was it told, whether states had any real intention of taking the steps needed to ensure that their Title I schools were able to implement the rigorous requirements of the new law with respect to what actually goes on in the classrooms of Title I schools. Examples of state plans falling short in this regard include the following:

- **Alabama** requires low-performing districts to commit the necessary resources to improving instruction and promises that the state will assist both schools and districts in capacity-building activities, but does not reference section 1114 or 1115.[34] The plan generally is short on specifics, and the Citizens' Commission's preliminary research indicates that the state is not fulfilling this promise. These findings will be detailed in the Citizens' Commission's next report.

- The failure of **Alaska** to comply with the capacity provision should have been evident to the Department's own review team, which observed in 1997: "In one schoolwide project, the state standards were widely displayed but staff had no knowledge of the requirements that curricula and assessments be aligned to those standards."[35]

- **Illinois** has a long history of inequity and inadequacy in its public schools. In 1997, the state had one of the nation's widest gaps in district spending, ranging from a low of about $3,100 per student to a high of almost $16,000 per pupil. Deplorable conditions in districts such as East St. Louis have received national attention. While legislators have begun to address these problems at the state level, Title I, with its section 1111(b)(8) capacity requirements and its consolidated planning process, offered Illinois another opportunity to remedy some of its long-standing woes. To some degree, Illinois took advantage of that opportunity (albeit with broad language which is not readily quantifiable): in its plan, it says it would address capacity issues by seeking legislative change and by providing access to resources. This plan opens a window of opportunity to get more resources to schools with the greatest needs. But much will depend upon the U.S. Department of Education's follow-up to determine whether the

efforts described generally in the plan have taken place.[36]

Some states, however, have recognized that Title I presents an additional resource for capacity-building, and have incorporated Title I into existing reform structures. For example:

- **Arkansas**'s plan outlined its "Creating Opportunities for Excellence" strategy—a "five-year process of continuous school improvement." In year one, district staff undergo an intensive professional development program, while schools study their curricula and assessment data. Specifically, schools will assess the needs of special populations, such as limited English proficient, migrant, and poor children, and then identify and coordinate state and federal resources to ensure that those children will have the opportunity to meet the same high standards. In subsequent years, schools will continually monitor student progress, update curricula, improve assessment strategies, and improve faculty skills. The state department of education will monitor progress through on-site visits and "will assist districts with program modifications should progress toward meeting student expectations be inadequate."[37]

B. Professional Development

The Department has been a strong proponent of professional development, but has never advised states that it will enforce relevant Title I provisions, nor has it required the states to enforce these provisions, or even required states to detail how they would fulfill these provisions. As a result, professional development is treated by the Department more as a new approach than an enforceable obligation of recipients under Title I.

For example, an article by the Department's Director of Compensatory Education clearly promotes professional development, calling it "indispensable" and describing how districts and schools under the reauthorization may for the first time use Title I dollars for professional development.[38] Similarly, the Department's guidance stresses the importance of professional development when outlining Title I's requirements.[39] Despite these pronouncements, the Department's instructions and forms for consolidated state plans do not even ask about the 10% set-aside required for schools in need of improvement, a provision that may have the dubious distinction of being Title I's most-ignored section.[40] Instead, the instructions generally discuss professional development only in the broadest terms, as when instructing states to explain how they will "[s]upport schools in which teachers benefit from high-quality professional development that enables them to teach effectively to challenging content standards . . . ."[41]

The reviewer guide for plan reviewers is similarly vague about Title I professional development requirements, focusing instead upon Title II. The guide asks:

> *Does the plan include goals, performance indicators, and time lines that the State will use in determining whether Title II is effective in helping teachers receive the kind of sustained high-quality professional development tied to high content standards that they will need to enable children to meet challenging content and performance standards . . . [?]*
>
> *Does the plan address how strategies to meet the needs of children that are the beneficiaries of included programs will be promoted through efforts related to: . . . supporting high-quality professional development for all teachers?*
>
> *[R]eviewers should also consider whether the consolidated plan speaks to the following: . . . Evidence that the SEA is promoting coordination of Title I, Part A, with Title II professional development activities.*[42]

Of course there is no serious disagreement among educators that high-quality professional development is a good idea, even "indispensable" in most Title I schools.[43] Notwithstanding this consensus, when funds are short, professional development often is one of the first items cut from budgets. For exam-

ple, a 1997 report noted how **Florida** lawmakers cut funding for summer teacher institutes, how the **Georgia** legislature reduced the professional development budget for the Institutes for Learning from $3 million to $500,000, and how **Minnesota** eliminated a district requirement to set aside money for professional development.[44] And at the school level, using Title I dollars for professional development purposes may require staff layoffs.

Difficult decisions to reallocate resources are rarely made simply because it is the right thing to do. Realizing the promise of this new law—that Title I students will be taught challenging content by "highly trained" staff—will not happen unless the issue of teacher training becomes a priority. Like the Department's refusal to scrutinize the rigor of state standards—and to insist on tough compliance measures—its abdication in this instance has meant that the law is more honored in its breach than in its observance.

Early evidence confirms this distressing fact. While no state completely ignores professional development, many discuss it in only the most cursory fashion:

- **Louisiana**'s plan acknowledged the goal that "[a]ll individuals involved in the teaching and learning process will be highly competent," but provided no indication of how it would attain that goal beyond having teachers design their own professional development plans and tracking the numbers of teachers trained.[45] To its credit, the Department did not accept this superficial statement, and instead required Louisiana to develop professional development performance indicators as a condition of plan approval.

While some states, such as **Arkansas**, acknowledged the necessity of professional development for school improvement,[46] states did not specifically discuss the professional development set-aside for schools in need of improvement. Even fewer appear to have implemented this critical provision—partly because few states have in fact identified which schools and districts need improvement. A preliminary review of performance reports submitted by states to the Department of Education indicates that some states had not identified any schools or districts for improvement; many states had identified no districts for improvement; and several states had not identified any schools for improvement.[47] (See Chapter V, Accountability.)

Not all the news is gloomy, however. For example, **California**'s plan recognized the need to provide "professional development opportunities specifically designed to focus on students in high-poverty and/or in low-performing schools."[48] Similarly, **Rhode Island** plans to use Title II funds to support "intensive, sustained professional development" for teachers in high-poverty schools "at rates comparable to, or higher than rates of teachers in other schools."[49] Other states, like **Illinois**, plan to link professional development to recertification requirements, as well as to student performance standards.[50] The key question here is whether these paper plans will be put into practice. That question, which only time can answer, will need to be addressed in connection with the next reauthorization.

C. State Support for Schoolwide Programs and Failing Schools

The most encouraging sign with respect to the capacity-building provisions in Title I is that most states have been willing to heed the call of the new law to help improve schools in a more systematic way by establishing state-organized and financed school support teams and related programs operating out of the state education departments. Probably not coincidentally, the Department's clearest guidance on capacity issues was on the topic of state support teams. In its Title I guidance, the Department discussed Title I's requirement for school support teams and distinguished educators, and detailed how **Washington** and **Pennsylvania** have satisfied this requirement.[51] The Department also specifically told reviewers that they "should also consider whether the consolidated plan speaks to the following . . . Identification of how school support teams will provide information and assistance to schoolwide programs, and if funds are sufficient, to schools with 75% or greater

poverty, and other schools in need of school improvement."[52] The result has been state plans that clearly discuss the creation, composition, and role of school support teams, such as the following:

- **California** plans to expand existing programs to develop a statewide system of school support to serve schoolwide programs and schools in need of improvement. With teams at the school, district, regional, and state levels, California will serve up to 1,200 schools in its initial stage, and approximately 3,000 over the next three years. The California Department of Education will "identify, broker, and disseminate resources from local, regional, state, and national model to support effective implementation of both Schoolwide and Targeted Assistance programs," while 12 regional support teams will "provide support, linkage, and capacity-building assistance to the entire network of interdependent teams in each region." The system also will use Distinguished Educators, Distinguished Schools, professional experts, and other consultants.[53]

- **New York** has developed Title I School Support Teams (SST) as part of the state's broader school support system, which encompasses the state education department, peer practitioners, Teacher Centers for professional development, professional organizations, and colleges and universities. The SST is "a cadre of peer practitioners" composed of about 130 practicing or recently retired educators, including teachers, administrators, and support personnel. The SST facilitates the implementation of schoolwide programs in high-poverty schools. New York plans to expand the SST program so that SST also will work with schools identified for program improvement under the Improving America's Schools Act or under the state's review process.[54]

- **Texas**'s plan closely follows Title I's mandates for building capacity. The state intends to contract with regional education service centers to provide school support, other technical assistance, and networking. A "distinguished educator corps" also will "provide intensive assistance to the schools and [districts] farthest from meeting the state's student performance standards. The educators will be drawn from distinguished schools, as well as from universities and other educational institutions that participate in the school support team network. As in its accountability system, the state is steadily ratcheting up the requirements for earning the distinction of being a distinguished school: in 1997-98, more than 75% of a school's students must pass both reading and math on the state assessment for a school to earn the designation "distinguished school," and for the 1998-99 school year, 80% or more must pass.[55]

More generally, the Council of Chief State School Officers (CCSSO) recently surveyed all the states to determine whether and to what extent they had managed to establish the state systems called for under the law to provide planning and technical assistance to both schoolwide programs and schools in need of improvement. The CCSSO found:

- Nearly 70% of the states had statewide systems of school support in operation. The remaining states were either starting up systems or still planning them.

- Almost two-thirds of states used, or planned to use, distinguished educators.

- The majority of states provided training for support team members or other service providers.

- Seventeen states had integrated their Title I-mandated support systems with other support structures to some degree.[56]

Unfortunately, very few states, in the Citizens' Commission's analysis of the CCSSO report, are actually using this provision—and attendant funding—to provide the kind of staff development that is needed in failing schools. For instance, many states appear to focus their efforts on one-day "on-site visits" to

schools, on one-shot workshops, and on helping schools to write their Title I plans. Moreover, as CCSSO acknowledged, the resources available under Title I have been insufficient to provide the "high level of resources needed for an effective system."[57]

Further, some evidence suggests that even when states develop plans that look good on paper, they may not always follow through on them:

- **Arizona**'s plan noted the state's vigorous promotion of schoolwide programs and its commitment to supporting an increased number of schoolwide programs, especially in small and rural districts. The plan stated that the Arizona Department of Education (ADE) had conducted numerous workshops and training sessions in schoolwide planning; that "[s]choolwide planning [was] a top priority of the new ADE School support teams"; that ADE would conduct multi-day institutes on various topics, including schoolwide program planning and implementation, for individuals providing leadership to schools; and that "[r]egional workshops [would] provide technical assistance in developing programs based on student needs and quality educational research." Yet a year later, a Department review found that ADE had failed completely to provide any technical assistance on schoolwide programs. Through interviews at a Title I elementary school on an Indian reservation with 100% low-income students, the Department learned that the school had been in the planning stage for schoolwide implementation for over *four years*, but still was without any documented plans. During this planning, the school had not received any technical assistance from ADE. The Department therefore recommended that ADE "[b]egin its technical assistance to schools and districts immediately, since it has not provided *any* technical assistance to date, on designing, implementing, and reviewing schoolwide program plans."[58]

Significantly, however, states have been undercut in their efforts to develop school support systems by the refusal of Congress to appropriate sufficient resources. Congress appropriated no funds for states to use for school improvement in the 1997-98 school year. Rather, states were forced to divert funds from their general Title I allocations for school improvement activities.[59] Particularly in an era when many in Congress are advocating the devolution of federal power and responsibility to state officials, it is reasonable to ask why resources have not been provided to assist the states in improving their capacity to handle their growing responsibilities.

D. Targeted Grants

Funding is a key element for any capacity-building effort, and targeted grants were Congress's means for directing additional resources to our nation's neediest districts. Accordingly, every year since targeted grants were added to Title I's funding formulas, the Clinton Administration has proposed that a significant portion of Title I appropriations should be channeled through targeted grants. Despite repeated requests from the U.S. Department of Education, however, Congress has never given full effect to statutory provisions that focus funds on the highest poverty school districts. Congress has refused to appropriate funds for targeted grants. Without those additional Title I dollars, high-poverty districts have even less capacity to overcome substantial barriers to achieving high standards.[60]

- Several states, however, including **Maryland** and **Missouri**, have made progress in addressing the needs of children in high-poverty communities. Maryland's targeted poverty grants supplement resources available to high-poverty schools in the state, while Missouri's new education funding formula will provide additional assistance to school districts, including St. Louis and Kansas City, enrolling high percentages of children from low-income families.

E. Successful State Capacity-Building Programs

Despite the widespread deficiencies discussed above, a number of states did articulate a strategy for sustained help and capacity-building for their most troubled schools and for the provision of the sort of intensive, hands-on professional development most experts believe is needed to turn around such schools. Some noteworthy states include:

- **Kentucky** has undertaken to identify and disseminate model programs through a "Results-Based Practices Showcase." The Kentucky Department of Education conducted a "hunt for good practices" and then produced a comprehensive catalogue for schools describing dozens of programs at the elementary, middle, and high school levels that have shown success. The state required all programs and practices it included to meet tough standards, including demonstrating 20% or greater improvement over two to three years of implementation. The state screened 450 providers and determined that only 61 could meet its requirements. In its consumer-friendly publication, the state features for each included program: evidence of effectiveness (including achievement data), program description (including an overview of the objectives, pedagogy, and the subjects and grades covered), teacher support (including written manuals and other materials), equipment requirements, and costs.[61]

- Following submission of its plan, **New York** state policymakers from the Board of Regents and Department of Education proposed an "urban partnership" with 45 "high need" districts that have high concentrations of students in danger of academic failure. The state would target $202 million in extra state aid to these districts if they submitted comprehensive reform plans addressing how they would improve the achievement of students at risk of not meeting high academic standards. These plans would include after-school tutoring, summer programs, and increased teacher training. Staff from the state education department would help districts draft and implement reform plans. The state also would provide financial incentives for recruiting and retaining qualified teachers in urban schools.[62]

- **Oregon** satisfies Title I requirements through its existing system of nine regional support teams, led by a Distinguished Educator and including state education department curriculum specialists, staff in Educational Service Districts, teachers, and parents. These teams assist with schoolwide planning, help schools in improvement, and conduct on-site reviews of districts and schools to help them meet state standards.[63]

- **South Carolina** annually selects distinguished educators from throughout the state to serve as "Master Teachers" on school support teams. After two weeks of intensive training on staff development, these teachers, while on sabbatical from their schools, work full-time for one year to provide in-classroom training and to serve on school support teams. Guidance counselors, staff from the State Department of Education's Office of Technical Assistance, representatives from institutions of higher education, representatives from the Centers of Excellence, and outside consultants also serve on school support teams, which help schools in the planning and implementation phases of schoolwide programs and schools in need of improvement.[64]

- **Texas** recognizes that capacity-building is a "critical component" of its strategy to improve local education programs. Its state plan clearly outlines how it will satisfy each Title I capacity component. State efforts have focused upon schoolwide programs: the state created a guide for the development of schoolwide plans and, early in 1995, the state held workshops at regional education service centers across Texas in order to help school administrators facilitate planning for schoolwide programs. Building upon experience from a 1994-95 pilot program in 12 schools, the regional centers train and coordinate support

teams that will focus primarily on helping school-wide programs, but will also provide leadership assistance to schools in need of improvement. Schools identified as in need of improvement are subject to interventions and sanctions through the state accountability system ranging from intervention (when "high quality improvement processes have been implemented"), to the deployment of distinguished educators or the assignment of an intervention team, to school closure.[65]

Finally, a potentially positive development is Congress's 1997 appropriation of $145 million for the Comprehensive School Reform Demonstration Program. The program's purpose is to provide financial incentives for schools to implement comprehensive school reform designs based upon reliable research and effective practices. To qualify, the program must coherently integrate the following nine components:

- effective, research-based methods and strategies;
- comprehensive design with aligned components;
- professional development;
- measurable goals and benchmarks;
- support within the school;
- parental and community involvement;
- external technical support and assistance;
- evaluation strategies; and
- coordination of resources.

Beginning in July 1998, the U.S. Department of Education is allocating funds to states, which in turn will award at least $50,000 per school to implement reforms. It is expected that the program will fund reform in approximately 2,500 schools nationwide.[66] Thus, the program could be a significant funding source for capacity-building in Title I schools.

Endnotes

[1] See Jay R. Campbell *et al.*, *NAEP 1996 Trends in Academic Progress* (Washington, D.C.: National Center for Education Statistics 1997).

[2] See House Committee on Education and Labor, 102d Congress, 1st Session, *A Report on Shortchanging Children: The Impact of Fiscal Inequity on the Education of Students At Risk* (1991) (prepared by William L. Taylor and Dianne M. Piché).

[3] See, e.g., U.S. Department of Education, *Discounted Telecommunications Services for Schools and Libraries, E-Rate Fact Sheet* (undated) (noting that wealthy schools were more than 2.5 times as likely to have Internet access in classrooms than poor schools, and that schools with high-minority enrollment were nearly 3 times less likely to have Internet access in classrooms than predominantly white schools): U.S. General Accounting Office (GAO), *School Facilities: America's Schools Report Differing Conditions* (HEHS-96-103) (Washington, D.C.: U.S. GAO June 1996) (noting that a nationwide GAO survey found that schools needing relatively greater repairs were those in inner cities, schools in the West, schools with 50.5% or more minority students, and schools with 70% or more poor students).

[4] Dianne M. Piché, "Cutting the Education Deficit: Recommendations for Improving Chapter 1," *in* Citizens' Commission on Civil Rights, *New Opportunities: Civil Rights at a Crossroads*, at 39 (Washington, D.C.: Citizens' Commission on Civil Rights 1993) (observing that the average Chapter 1 allocation per eligible child of $800 to $1,000 does not compensate for disparities of several thousand dollars per child between rich and poor districts).

[5] Commission on Chapter 1, *Making Schools Work for Children in Poverty* (Washington, D.C.: Commission on Chapter 1/American Association for Higher Education 1992). The Commission, chaired by former Maryland Superintendent of Education David Hornbeck, represented a broad cross-section of the education and advocacy community. *Id.* at ii-iii.

[6] Robert Slavin, *Staff Development and R & D in Chapter 1 Programs in the Future* (Baltimore, MD: Center for Research on Effective Schooling for Disadvantaged Students May 1992).

[7] See, e.g., Commission on Chapter 1, *supra* note 5.

[8] National Council on Education Standards and Testing, *Raising Standards for American Education—Report to Congress, the Secretary of Education, the National Education Goals Panel and the American People* (Washington, D.C., Jan. 24, 1992).

[9] Title I of the Elementary and Secondary Education Act (ESEA) § 1111(b)(8), 20 U.S.C.A. § 6311(b)(8) (Supp. 1998). The federal regulations mirror this statutory language. As the Department explained in its proposed regulations:

> *The [negotiated rulemaking] Committee agreed to include statutory language on capacity building in [34 C.F.R.] Sec. 200.1(b)(4). As a result, this provision requires each State plan to describe how the SEA [state educational agency] will help each LEA [local educational agency] and Title I school, as applicable, develop the capacity to implement the components of a schoolwide or targeted assistance program and meet its responsibilities with respect to school improvement. The SEA must also describe other factors it deems appropriate to provide students an opportunity to achieve the knowledge and skills embodied in the State's content standards.*

60 Federal Register 21,399, 21,401 (1995).

[10] "Opportunity to learn" (OTL) quickly became a term of opprobrium among conservatives:

> *[O]pportunity to learn standards represent a failed policy that is based upon 'inputs' into the educatiom system instead of focusing on improving student learning.*

H.R. Report No. 103-425, at 716 (1994) (expressing Republican views on the Improving America's Schools Act of 1994). In 1994, after its amendment, Title I required each state plan to describe: "such other factors the State deems appropriate (*which may include opportunity-to-learn standards* or strategies developed under the Goals 2000: Educate America Act) to provide students an opportunity to achieve the knowledge and skills described in the challenging content standards adopted by the State." Improving America's Schools Act, Public Law No. 103-382, 108 Stat. 3518, 3523 (1994) (emphasis added). In 1996, after Republicans gained control of Congress, all references to OTL were stripped from Goals 2000 and Title I, so that the statute now reads: "such other factors the State deems appropriate to provide students an opportunity to achieve the knowledge and skills described in the challenging content standards adopted by the State." 20 U.S.C.A. § 6311(b)(8)(B) (Supp. 1998).

While the basic "opportunity to learn concept" remains in Title I law and regulations, see, e.g., 34 C.F.R. § 200.1(b)(4), it has not been implemented. After the final regulations were issued on July 3, 1995, this requirement, to the Citizens' Commission's knowledge, was never mentioned to the states again: not in the Department's instructions to states for preparing their Title I plans, not in the guidance for peer reviewers, and not in the comprehensive guidance on Title I implementation subsequently issued to states and districts.

[11] ESEA § 1119(a)(1), 20 U.S.C.A. § 6320(a)(1) (Supp. 1998).

[12] See ESEA § 2001 *et seq.*, 20 U.S.C.A. § 6601 *et seq.* (Supp. 1998).

[13] ESEA § 1119(a)(1), 20 U.S.C.A. § 6320(a)(1) (Supp. 1998).

[14] ESEA §§ 1119(a), (b), 20 U.S.C.A. §§ 6320(a), (b) (Supp. 1998).

[15] See ESEA § 1119(h), 20 U.S.C.A. § 6320(h) (Supp. 1998).

[16] See ESEA § 1116(c)(1), 20 U.S.C.A. § 6317(c)(1) (Supp. 1998).

[17] ESEA § 1116(c)(3), 20 U.S.C.A. § 6317(c)(3) (Supp. 1998).

[18] ESEA §§ 1117(a)(2), (c), 20 U.S.C.A. §§ 6318(a)(2), (c) (Supp. 1998).

[19] ESEA § 1117(a)(1), 20 U.S.C.A. § 6318(a)(1) (Supp. 1998).

[20] ESEA § 1116(c)(4), 20 U.S.C.A. § 6317(c)(4) (Supp. 1998).

[21] ESEA §§ 1111(b)(2), (3), 20 U.S.C.A. §§ 6301(b)(2), (3) (Supp. 1998).

[22] ESEA §§ 1113, 1122-1125, 20 U.S.C.A. §§ 6313, 6332-6335 (Supp. 1998).

[23] ESEA § 1118, 20 U.S.C.A. § 6319 (Supp. 1998).

[24] See *supra* note 10.

[25] See, e.g., 60 Federal Register 21,399, 21,401 (1995); 34 C.F.R. § 200.1(b)(4) (1997).

[26] 60 Federal Register 3306 (1995).

[27] Letter from the Title I Reform Network to Thomas W. Payzant, Assistant Secretary for Elementary and Secondary Education, Re: Consolidated State Plans Under Section 14302 of the Improving America's Schools Act (IASA) (Feb. 13, 1995) (emphasis added).

[28] See U.S. Department of Education, *Elementary and Secondary Education Act (ESEA) as amended by the Improving America's Schools Act of 1994 (IASA) Final Consolidated State Plan (Section 14302 of the ESEA)*, at App. A (undated) (hereinafter "*Plan Instructions*") (providing instructions and forms for states' preparation of their consolidated plans); 60 Federal Register 31,595, 31,598-99 (June 15, 1995) (responding to public comments on proposed guidance for preliminary consolidated state plans).

[29] Instead, the Department chose to pose broad questions such as:

1) What are your State's specific goals for the academic achievement of all students in your State in the core academic subjects? How is the State determining whether all children who benefit from federal programs included in this plan reach those goals?

2) How will your State support the work of schools and school districts to enable all children served under the plan to reach the goals described in response to Question 1?

3) For each group of children who benefit from the federal programs included in the plan, how will

your State determine whether its various strategies for enabling children to improve academic achievement or reach non-academic goals—including its strategies for promoting high-quality professional development and safe and drug-free school environments—are working or need modification?

U.S. Department of Education, *Plan Instructions*, *supra* note 28, at 3, 5, 7.

[30] The Department may not have emphasized Title I's capacity-building provision in the consolidated plan process because these were, in fact, consolidated plans encompassing multiple programs. These plans were intended to encourage states to consolidate and coordinate separate federal categorical programs with state educational achievement goals. See ESEA § 14301, 20 U.S.C.A. § 8851 (Supp. 1998) ("It is the purpose of this part to improve teaching and learning by encouraging greater cross-program coordination, planning, and service delivery under this chapter and enhanced integration of programs under this chapter with educational activities carried out with State and local funds"). See also ESEA § 14302, 20 U.S.C.A. § 8852 (Supp. 1998). Unfortunately, this coordination was done at the expense of implementing specific provisions of Title I, such as the section on building schools' capacity.

[31] U.S. Department of Education, *Plan Instructions*, *supra* note 28, at 2 (emphasis in original).

[32] *Id.* at 5.

[33] Typical questions in the Guide included:

- *Does the plan describe the State's strategies and activities . . . for assisting its LEAs and schools to meet the goals [established for standards, assessments, and performance indicators] . . . ?*
- *Does the plan address how strategies to meet the needs of children that are the beneficiaries of included programs will be promoted through efforts related to . . .*
  - *supporting high-quality professional development for all teachers?*
  - *utilizing technology to support teaching and learning? . . .*
  - *identifying and removing barriers to effective schoolwide change? . . .*
  - *providing technical assistance to LEAs and schools on teaching and learning and holding them accountable for student performance? . . .*
- *Does the plan address how the State will use the information [gathered to determine if its strategies are being implemented at the school and district level] . . . (a) to make any needed changes in the objectives, strategies, activities, and use of resources described in this plan or in its manner of providing technical assistance to and collaborating with school districts and schools and (b) to support school improvement under Part A of Title I?*

U.S. Department of Education, *Reviewer Guide for Panel Chairs and Other RST Members for Final Consolidated State Applications Under the Elementary and Secondary Education Act, Parts I-IV and Summary Form*, at 15, 19 (May 16, 1996) (hereinafter "*Panel Chair Reviewer Guide*").

[34] Alabama State Department of Education, *Final Consolidated State Plan*, at 10, 34 (Mar. 1997).

[35] U.S. Department of Education, *Alaska Integrated Review Report*, at 11 (July 10, 1997).

[36] See Illinois State Board of Education, *Consolidated State Application for Federal Programs*, at 5, 8-9 (June 1996); Jonathan Kozol, *Savage Inequalities* (New York: Crown Pub. 1991); U.S. GAO, *School Finance: State Efforts to Equalize Funding Between Wealthy and Poor School Districts* (GAO/HEHS-98-92), at 27 (Washington, D.C.: U.S. GAO 1998) (noting that Illinois has a large funding gap between poor and wealthy districts, but that the state has made only a small equalization effort); Kerry A. White, "Ill. Lawmakers Get One More Try to Pass School Funding Reform," *Education Week*, Nov. 26, 1997.

[37] Arkansas Department of Education, *Consolidated State Plan for Improving America's Schools Act*, at 10-11, Addendum (undated).

[38] Mary Jean LeTendre, "Professional Development: A Tool for Improving Teaching and Learning," 1 *Journal of Education for Students Placed at Risk* 291, 292 (1996).

[39] U.S. Department of Education, *Guidance on Professional Development*, at 1 (Apr. 1996) ("Professional development plays an essential role in successful education improvement.").

[40] See U.S. Department of Education, *Plan Instructions*, *supra* note 28.

[41] *Id.* at 5.

[42] U.S. Department of Education, *Panel Chair Reviewer Guide*, *supra* note 33, at 12, 15, 25. See also *id.* at 28 (discussing considerations for evaluation of plans with regard to Title II).

[43] See, e.g., Kati Haycock, "Good Teaching Matters . . . A Lot," 3 *Thinking K-16* 12 (Summer 1998).

[44] Diane Massell *et al.*, *CPRE Policy Brief: Persistence and Change: Standards-Based Systemic Reform in Nine States*, at 8 (Philadelphia, PA: Consortium for Policy Research in Education Mar. 1997).

[45] Louisiana Department of Education, *Consolidated State Plan for IASA Programs*, at 34 (May 1996).

[46] Arkansas plans to reserve .5% of its Title I allocation for school improvement grants for schools that have made inadequate progress in improving student achievement. The state will award grants on an application basis for professional development activity. Arkansas Department of Education, *Consolidated State Plan for Improving America's Schools Act: Supplemental Information (Fiscal Accountability)* (undated).

[47] See Chapter V, Accountability, for more on identification of schools and districts in need of improvement.

[48] California Department of Education, *California Consolidated State Plan*, at 52 (May 15, 1996).

[49] Rhode Island Department of Education, *Consolidated State Plan*, at 4 (undated).

[50] Illinois State Board of Education, *supra* note 36, at 11-12 (listing as one tactic to achieve its professional development goals: "Require continued professional development in order to renew certificate.").

[51] U.S. Department of Education, *Guidance on Schoolwide Programs*, at 14-17 (Apr. 1996). The *Guidance on Professional Development*, *supra* note 39, refers back to the discussion in *Guidance on Schoolwide Programs*. The *Guidance on Standards, Assessments, and Accountability* also mentions that states must designate distinguished schools, noting that those schools "may serve as models and provide support to other schools, especially schoolwide programs and schools in school improvement, to assist such schools in meeting the State's student performance standards." U.S. Department of Education, *Guidance on Standards, Assessments, and Accountability*, at 80 (Mar. 1997). The Department also describes these capacity measures in its *Cross-Cutting Guidance for the Elementary and Secondary Education Act*, at 28-30 (Sep. 1996).

[52] U.S. Department of Education, *Panel Chair Reviewer Guide*, *supra* note 33, at 25. However, the instructions to states for completing state plans only asked broad, general questions about state support.

[53] California Department of Education, *supra* note 48, at 40-43.

[54] The University of the State of New York and the State Education Department, *New York State's Consolidated Plan for IASA*, at 31 (May 1996).

[55] Texas Education Agency, *Texas Consolidated State Plan*, at 51-55 (Apr. 1996).

[56] Council of Chief State School Officers (CCSSO), *States Supporting Schools: A Status Report on Implementation of Statewide Systems of School Support Under the Improving America's Schools Act* (Washington, D.C.: CCSSO revised ed., Sep. 1997).

[57] *Id.* at 8.

[58] Arizona Department of Education, *Final Consolidated State Plan*, at 13-15 (May 20, 1996); U.S. Department of Education, *A Report to the Arizona Department of Education*, at 2-3 (May 29, 1997) (reporting results from an integrated review).

[59] U.S. Department of Education, *Basic Programs in Local Educational Agencies: State Educational Agency Allocation of Title I Funds to Local Educational Agencies for School Year 1997-98; Local Educational Agency Identification and Selection of School Attendance Areas and Allocation of Title I Funds to those Areas or Schools*, at 5 (May 1997).

[60] See, e.g., "House Panel Would Level-Fund Title I in FY 1999," 3 *Title I Monitor* 6 (Aug. 1998).

[61] Kentucky Department of Education, Division of School Improvement, *Results Based Programs Directory 1997-98* (1997).

[62] Caroline Hendrie, "Mills Proposes Broad Urban Policy for N.Y.," *Education Week*, Mar. 25, 1998, at 20.

[63] CCSSO, *supra* note 56, at 9.

[64] *Id.* at 11; South Carolina State Department of Education, *South Carolina State Department of Education Consolidated Plan for Fiscal Year 1997 Under the Provisions of Improving America's Schools Act*, at 15-16 (May 1996).

[65] Texas Education Agency, *supra* note 55, at 43, 46-49, 52, 56, 161.

[66] See FY1998 Department of Education Appropriations Act, Public Law No. 105-78; H.R. Report No. 105-390 at 32, 38, 96-99, 108-109 (1997); U.S. Department of Education, *Guidance on the Comprehensive School Reform Demonstration Program* (Mar. 12, 1998).

Chapter VII

Waivers

I. Introduction

As part of Title I's exchange of greater flexibility for increased accountability, Congress included "waiver" provisions in the recent amendments to the Elementary and Secondary Education Act (ESEA).[1] Now, for the first time in more than 30 years of federal education law, grant recipients may be relieved of the duty to comply with ESEA provisions that are deemed to impede improvement and reform. Specifically, the ESEA waiver authority grants the Secretary of Education the power to waive for up to three years "*any* statutory or regulatory requirement of this Act" for any state, school district, or school which receives funds under an ESEA program.[2] The ESEA, however, does not permit several key requirements to be waived, including: civil rights; health or safety; parental participation; allocation or distribution of funds to grant recipients; use of federal funds to supplement, not supplant, nonfederal funds; prohibition on a state considering federal grants in determining school districts' eligibility for state aid; maintenance of effort; comparability of services; equitable participation of private school students; charter schools; and prohibitions on the use of funds for religious worship or instruction.[3]

Notwithstanding these statutory safeguards, some education advocates were concerned about the effect of the new ESEA waiver authority. These concerns prompted the Title I Reform Network, in 1995, to file a standing request with the U.S. Department of Education ("Department") for waiver material under the Freedom of Information Act (FOIA). This chapter analyzes information produced by that request and publicly available data and reports as of December 31, 1997, the midpoint of the authorization period.[4] Building upon the work of the Title I Reform Network, this chapter examines the extent to which the waiver provisions, and the Department's implementation of them, have supported or undermined the core objective of the law: *to improve educational outcomes for children in schools with high concentrations of poverty.*

A. The Waiver Process

The Department has established a multilevel review process for waiver requests. Waiver staff and staff from the affected program office lead the initial evaluation, while the Office of the General Counsel reviews the legality of the request, and the Office for Civil Rights flags any civil rights issue involving the applicant. The Waiver Review Board, composed of senior Department officials, then evaluates the request. Upon completion of their review, they issue a recommendation to the Under Secretary, who makes the final decision.[5]

The Department has adopted several criteria for the evaluation of waiver requests. At a minimum, the Department insists that each applicant demonstrate that it has met the statutory requirements by: (1) identifying the affected federal program(s); (2) describing the requirements to be waived and how a waiver would increase the quality of instruction or improve academic performance; (3) describing which, if any, similar state and local requirements would be waived, and how such waivers would help achieve the applicant's stated objectives; (4) describing specific, measurable, educational improvement goals and expected outcomes for all affected stu-

dents; (5) describing how schools would continue to provide assistance to the same population served by programs for which waivers are requested; (6) describing the methods to be used to measure progress in meeting goals and outcomes; and by (7) providing assurance that the public, school district, and/or state educational agency had an opportunity to comment on the waiver request, and submitting those comments.[6] The Department has widely disseminated materials outlining the above requirements, but has not publicized other criteria which it has at least recognized, although not always clearly employed, when assessing waiver requests. Its actual waiver decisions demonstrate that the Department applies its criteria flexibly, weighting factors differently depending upon the statutory provisions and the applicants involved.

B. Promoting Waivers

Since passage of the 1994 Title I amendments, the Department has vigorously promoted the new waiver provisions. One month after the creation of the ESEA waiver authority, the Department alerted all chief state school officers to the new waiver provisions and encouraged early filing of waiver requests.[7] The Secretary also mailed preliminary waiver guidance and an overview on the new ESEA flexibility to all governors and superintendents, urging superintendents in particular "*to look carefully at this material and take this opportunity to begin a discussion within your district as to how—working closely with your State educational agency—you can take maximum advantage of the opportunities discussed.*"[8] The Department continually stressed the availability of waivers, announcing that it was "prepared to work with your State to remove federal requirements impeding your ability to help all children reach challenging academic standards."[9] Only in passing did the Department mention accountability provisions. Not until August 1996, did the Department issue the final version of its nonbinding *Waiver Guidance*.[10]

C. Overview of Waiver Requests

States and school districts soon responded to the Department's invitation to submit waiver requests. The Palm Beach County School District in **Florida** filed the first request in November 1994. In the next three years, nearly 500 more requests for waivers of Titles I and II followed. (See Figure 1, Figure 2.)

Figure 1. Disposition of Waiver Requests, 1994-1997[11]

Year Received	Total #	# Granted	# Denied	# Returned/ Withdrawn	# Pending	# Unknown
1994	1	1 (100%)	0	0	0	0
1995	188	100 (53%)	12 (6%)	75 (40%)	0	1 (<1%)
1996	154	46 (30%)	21 (14%)	86 (56%)	0	1 (<1%)
1997	148	82 (55%)	8 (5%)	43 (29%)	12 (8%)	3 (2%)
Total	**491**	**229 (47%)**	**41 (8%)**	**204 (42%)**	**12 (2%)**	**5 (1%)**

Source: Citizens' Commission Analysis of FOIA Request Material from U.S. Department of Education.

Figure 2. Types of Waiver Requests[12]

Year	Total #	Eligibility/ Targeting (§ 1113)	Schoolwide Programs (§ 1114)	Fiscal (§1120A/ 14501)	Standards' Deadline (§ 1111)	Professional Development (§ 2206)	Other (<5 requests per §)
1994	1	1 (100%)	0	0	0	0	0
1995	188	152 (81%)	8 (4%)	7 (4%)	0	5 (3%)	16 (8%)
1996	154	77 (50%)	37 (24%)	18 (12%)	0	6 (4%)	16 (10%)
1997	148	43 (29%)	61 (41%)	4 (3%)	28 (19%)	3 (2%)	9 (6%)
Total	**491**	**273 (56%)**	**106 (21%)**	**29 (6%)**	**28 (6%)**	**14 (3%)**	**41 (8%)**

Source: Citizens' Commission Analysis of FOIA Request Material from U.S. Department of Education.

II. The U.S. Department of Education's Record

A. Waivers of Title I Targeting Requirements

Title I's history has been characterized by the tugs and pulls between those who would direct federal dollars toward the poorest children in the poorest communities and those who would spread Title I grants among as many schools as possible. One arena for this struggle has been Title I's school eligibility provision, section 1113. This section, which was amended in 1994 to tighten school eligibility and base it on poverty rather than educational achievement, requires school districts to rank their schools by the number of low-income students and serve their highest poverty schools with a specified minimum allocation.[13] When implemented correctly, amended section 1113 now targets more dollars to the highest poverty schools—and no longer funds many schools which formerly were eligible under Chapter 1.

Not surprisingly, the majority of waiver requests during the period studied by the Commission related to section 1113. The requests usually reflected districts' desire to serve more schools and more students, despite new restrictions on eligibility. Many districts sought waivers to continue Chapter 1 programs in schools now ineligible under the amended Title I. Others simply wanted to extend Title I programs to more schools within their district. Districts also frequently asked the Department to waive Title I provisions for allocating funds among eligible schools. In all types of applications, applicants often argued that poverty did not always correspond with educational need, echoing language from Chapter 1 when eligibility was based upon achievement rather than poverty.

Several *de facto* criteria, in addition to the statutory requirements, emerge from the Department's decisions on eligibility waiver requests. The Department emphasized poverty, often listing poverty rates, in both relative and absolute terms, as the first factor in waiver decisions. The Department had no hard and fast rule about what poverty level would (or would not) support a waiver. Usually the Department found that there were only small variations between schools' poverty rates, or that the ineligible schools were close to the district average, and thus granted the waivers, recognizing that slight changes in student population

could alter school eligibility from year to year.

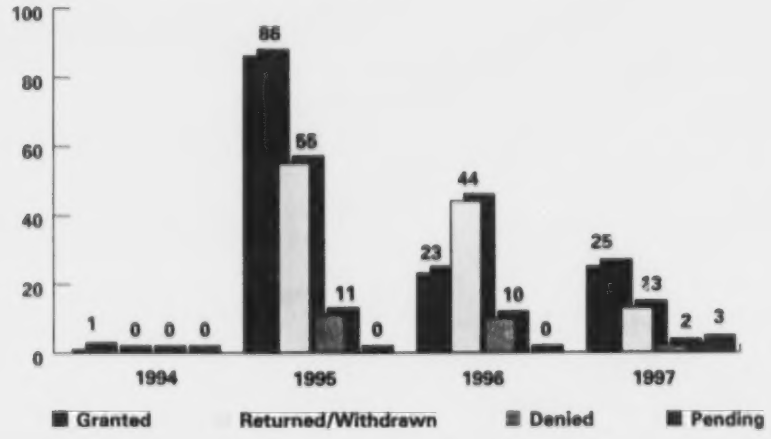
The decisions also discussed such matters as whether: (1) the district had demonstrated that the waiver would improve academic achievement; (2) the Title I program had been effective; (3) the district had set clear, measurable educational improvement goals for the affected students; and whether (4) even with a waiver, the needs of students at the districts' higher poverty schools would be adequately addressed.[14] What the Department considered sufficient evidence to meet these criteria varied considerably, particularly for educational achievement—it granted waivers when applicants submitted pages upon pages of documentation as well as when applicants simply stated that Title I programs had helped them, providing little, if any, supporting material.

The Department applied its criteria flexibly, tailoring its decisions to the applicant's circumstances. It thus could assist districts in preserving the *status quo* in times of exceptional change. For example, the Department waived eligibility requirements for Ritenour School District in **Missouri**, allowing the district to serve two schools that had lost their eligibility when low-income housing in their area had been demolished, thus minimizing disruption in Title I services while the housing was reconstructed. Such flexibility helped the Department to promote Title I's objectives of targeting low-income students.

The Department also granted a waiver for an Urbana, **Illinois**, school district in which funds were going to a high-poverty school populated largely with graduate students' children who already were meeting or exceeding state educational goals, but who met the statute's income criteria for eligibility. The district wanted to distribute that school's Title I funds to three other schools where achievement was lower and poverty was more deeply entrenched. The grant of this waiver exemplified how waivers' flexibility could allow districts to better meet the needs of truly disadvantaged children.

The Department's flexibility toward targeting waivers reflected its recognition that this was a new law, with new eligibility requirements. In fact, many (if not most) schools requested waivers so that they could continue to serve the same schools they had funded under Chapter 1. In 1995, the Department tended to grant waivers to allow now ineligible schools to find alternate funding, but usu-

Figure 3. Eligibility/Targeting Waiver Requests



Source: Citizens' Commission Analysis of FOIA Request Material from U.S. Department of Education

ally limited such "transition" waivers to one year. It denied extensions of these transition waivers when it was not convinced that the educational needs of students at the ineligible school were great enough to justify a continued transfer of funds, often noting that the "waiver was originally granted for the purpose of allowing the District to plan for the orderly termination of Title I services." Only districts which could show both the effectiveness of their Title I programs by pointing to improved student performance and the similarity of the academic needs of its students at eligible and ineligible schools were granted extensions.

In sum, out of 273 requests for waivers of section 1113, the Department granted 135, denied 23, returned or acknowledged the withdrawal of 112, and, as of December 31, 1997, had yet to decide 3. (See Figure 3.) Most schools for which waivers were granted were close to the statute's eligibility threshold and had demonstrated (albeit sometimes superficially) their commitment to academic improvement. The fiscal impact of these waivers, while important to the districts involved, was relatively minor within the larger scheme of Title I, in part because the affected districts usually were small, and the waivers often involved only one or two schools. Thus, although the Department granted the majority of requests for waivers of Title I's targeting requirements, these waivers did not seriously undermine the statute's intent to target aid to poor children.

B. Waivers to Support Reform

As states and school districts began to implement the new law, they realized that waivers could be used for more than maintaining the *status quo*. Three important areas in which waivers have helped states and school districts to implement significant reform are: (1) schoolwide programs, (2) professional development, and (3) pilot programs.

1. Schoolwide Programs

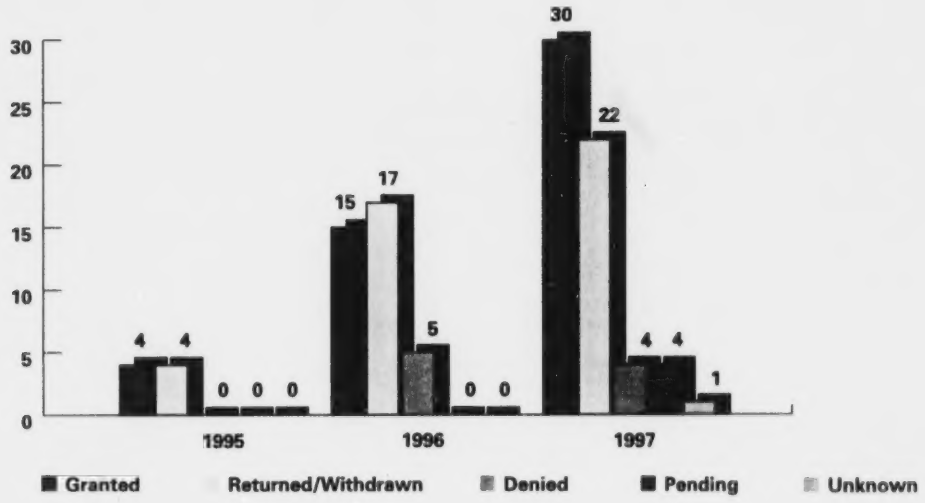
The reauthorized Title I recognizes the importance of schoolwide reform programs by expanding the number of schools permitted to use Title I funds to implement schoolwide improvements. Under the new law, schools with poverty levels of more than 60% could begin implementing schoolwide programs in 1995-96, and schools with poverty levels of more than 50% could begin such programs after 1996-97.[15] The popularity of schoolwide programs is demonstrated by the steadily increasing number of requests to lower the statutory threshold still further, nearly half of which (49) were granted. The Department denied but a handful of requests (9), returning many (43) as unnecessary (often because schools already qualified for schoolwide status). (See Figure 4.)

As with eligibility waivers, the Department had a *de facto*, rather than formal, policy for weighting the statutory requirements and considering criteria beyond those required by statute. The decisions show that two factors, in particular, weighed heavily in the disposition of schoolwide waiver requests: (1) the scope of the proposed program; and (2) the school's poverty level. Successful applicants, at a minimum, demonstrated that they had developed a schoolwide program plan that was likely to upgrade the total education program and that they had set clear and measurable educational goals. If it appeared that the school simply would continue to use the targeted assistance model, that is, extend the existing Title I program approach to more children without implementing comprehensive schoolwide reform strategies, the Department denied the waiver.

The Department also looked at how far the school fell beneath the statutory threshold. Schools that had poverty levels of more than 40% and had fulfilled all other requirements for schoolwide programs, such as completing the requisite planning, generally were granted waivers. By contrast, at least one **Pennsylvania** school district withdrew its request after being informed that its schools with 19.5% to 35.1% poverty levels were so far below the eligibility threshold that the Waiver Review Board could not seriously consider its request.

Schoolwide waiver requests, like those for targeting, usually proposed to extend Title I services to more students. Some districts wanted to expand programs for Title I students to all students within the

Figure 4. Schoolwide Waiver Requests



Source: Citizens' Commission Analysis of FOIA Request Material from U.S. Department of Education

school. For example, the Department granted the request of one school in Pasco, **Washington**, that wanted to stop isolating Title I students and instead extend the "Reading Recovery/Descubriendo La Lectura" program to all its students.

Other districts sought to extend proven programs working in one school into other schools, as when the Montgomery County Schools in **North Carolina** requested a waiver to expand the "Success for All"[16] program into a fourth school that was 4.25% below the statutory threshold for schoolwide programs. The Department granted the waiver.

Three states—**South Carolina**, **Hawaii**, and **Mississippi**—submitted blanket requests to lower the statutory threshold for schoolwide programs from 50% to 40%. After concluding that the waiver would support the state's comprehensive school reform efforts, the Department granted South Carolina's request and lowered the poverty threshold for schools that planned to use one of the state's approved, and successfully piloted, Primary Success models for early intervention. The Department denied Hawaii's request, and Mississippi withdrew its application after discussions with the Department.

2. Professional Development

Under the reauthorized Title I, all Title I schools must provide professional development.[17] Much of the funding for professional development comes from Title II, formerly the Eisenhower Professional Development Program, which mandates that schools prioritize training in math and science.[18]

While endorsing the emphasis on professional development generally, 11 states and 2 school districts requested 14 waivers of the priority for math and science, ESEA § 2206(b).[19] These requests fell into three general categories: (1) the applicant had identified a greater need for professional development in areas other than math and science; (2) the applicant had alternative funding for professional development in math and science; and (3) the state wanted to align its professional development with its other educational reform efforts. The Department

granted 11 waivers, often reasoning that the "intent of the reauthorized ESEA was to provide funding for professional development in all core subjects, so the request is within the spirit of the law." The Department only denied two applications, and one applicant withdrew its request.

The two requests (**Mississippi**'s and **New Jersey**'s) denied by the Department both argued that the state had greater academic needs in subjects other than math and science but provided little evidence to support their argument. The Department denied these requests because they failed to show how the waiver would increase student performance, or how the request was tied to school improvement, or even that the states had established measurable educational improvement goals.

By contrast, the Department granted **Missouri**'s compelling, and well-documented, request for a waiver. Missouri state assessments clearly showed that students were achieving at lower levels in reading and social science than in math and science. The state wanted to equalize achievement, and the Department granted Missouri's request to concentrate development dollars in areas where students demonstrably needed greater help. Similarly, the Department granted two **Pennsylvania** school districts' requests that contended the districts had greater needs in other subjects. Further, the Department accepted the districts' assertion that, because they had sufficient funding for math and science professional development through local dollars and Goals 2000, their Title I dollars could be better spent elsewhere.

Two states, **South Dakota** and **Virginia**, maintained that they had alternative funding for math and science professional development through National Science Foundation grants. South Dakota further argued that its students already were achieving at higher levels in math and science. The Department, acknowledging this outside support and the states' clear education goals, granted these requests.

The Department also granted the remaining seven requests (from six states) that argued waivers were needed in order to align teacher education with state education reform efforts. For these waivers, the decision memos often were longer than the applications themselves. Nevertheless, the Department granted waivers to allow states to align professional development with content standards (**Florida**, **Vermont**); to focus upon pre-service teacher education (**Nebraska**); to emphasize foreign languages (**Oregon**); and to support state plans for systemic education reform (**Wyoming**). **Kentucky** withdrew its request.

3. Pilot Programs

The new waiver provision's flexibility also supported reform by allowing the continuation of at least two successful pilot programs. In both cases, the Department waived allocation requirements so that the affected schools, although entitled to less money than other higher poverty schools in their districts, would have sufficient funds to continue their pilot programs. A waiver from the Department enabled Cincinnati, **Ohio**, to maintain pilot programs in four high-poverty elementary schools that already had shown achievement gains. Specifically, one school was implementing "Success for All"; one school had a schoolwide program which included classroom technology, multi-age classrooms, extended day programs, tutoring, and extensive professional development; and two other schools, with students from across the district, provided intensive educational services to ten-year-olds who did not meet the district's criteria for graduation from the third grade.

Similarly, a waiver allowed the Modesto City Schools in **California** to fund the final year of a "Success for All" pilot program in one elementary school. This pilot program had contributed to significant student achievement gains, and the results were being used by schools inside and outside of the district to inform the design of their own reading programs.

C. Waivers for Desegregation

A small but significant number of requests involved districts seeking eligibility waivers for schools participating in desegregation plans. The ESEA permits the Department to grant such waivers either under its general waiver authority or under a

specific desegregation waiver authority for schools with at least 25% low-income students participating in state- or court-ordered desegregation plans.[20] Districts requesting these types of waivers sought to preserve Title I services for minority students who, absent a waiver, would lose that assistance when they transferred to a desegregated school. Of the 24 requests involving desegregation programs, including 7 voluntary plans, none were denied. The Department granted 15 waivers, invoking their desegregation waiver authority in 11 of those decisions, returned 2 as unnecessary in light of statutory flexibility, and returned 1 as invoking the wrong waiver authority.[21] The remaining six requests were withdrawn.

Allowing Title I funding to follow poor minority children could further the goals of both Title I and desegregation by serving the interests of equity, integration, and helping poor children meet high academic standards, as successful applicants often stressed. Some applicants emphasized the adverse consequences of denying the waiver. White Plains Public Schools in **New York**, for example, wished to extend Title I services to all its elementary schools because, it argued, the success of its voluntary desegregation plan hinged upon maintaining similar resources in all of its schools: giving Title I funds to some schools but not to others might have altered the incentives for parents to send their children to integrated schools, thus tipping their racial balance. The Department granted the waiver.

The Department also granted a waiver for the Woodland Hills, **Pennsylvania**, school district, which argued that it would violate the court's order if it did not serve all students equitably, i.e., provide equal Title I services in all its schools. Notably, the St. Louis Public Schools in **Missouri** made a similar argument in its waiver request—a request which was withdrawn after the plaintiffs in the school desegregation case pointed out that the district had misinterpreted the court's order.

Granting desegregation waivers does not always serve the ends of Title I, however. Even the Department expressed some skepticism about the value of skipping high-poverty schools to serve low-poverty schools in a desegregation plan. However, despite such doubts, the Department granted one such request from San Diego, **California**, after the Waiver Review Board recommended approval, reasoning that "this is the type of situation Congress had in mind when it created this special waiver provision . . . ."[22]

D. Waivers Returned or Withdrawn

For each year of the period studied, a significant portion of waiver requests either were returned or withdrawn. Sometimes, the request was returned as incomplete or late. On occasion, the applicant withdrew the application rather than have it denied when the Department made it clear that it would not grant the request. Most often, however, the request was returned or withdrawn because the waiver was deemed unnecessary by either the Department or the applicant. A change in circumstances, such as an increase in the number of poor children at the school, sometimes made a waiver unnecessary. Or a district had overlooked a relevant statutory provision, or recent amendment, not realizing that the law already provided an exception for its situation.

Especially in the first two years after the law was passed, many states and districts requested waivers that the Department held were not necessary in light of the new flexibility inherent in the restructured Title I. For example, a district might not need a waiver if it funded schools in rank order within grade-span grouping rather than within the district as a whole.

Sometimes, too, the Department's interpretation of the law made a waiver unnecessary. Several waivers were returned as unnecessary after the Department's *Preliminary Title I Guidance* explained that a district "may use the feeder pattern concept to project the number of low-income children in a high school, for example, based on the average poverty rate of the elementary school attendance areas that feed into the high school."[23]

One much criticized Department policy allowed local districts, rather than states, to establish their own standards and assessments. Consistent with this policy, the Department returned as unnecessary a Weld County, **Colorado**, school district request to

allow the district to continue to use a norm-referenced test for one year to give it time to develop its own—rather than adopt the state's—more accurate, criterion-referenced assessments.

III. Conclusions

With waivers, as in other areas, the Department got off to a troubling start by promoting flexibility while minimizing accountability. And while the Department prepared preliminary waiver guidance in January 1995, it did not complete final guidance until August 1996. In the meantime, guidance came in the form of responses to waiver requests—which, while helpful to the individual applicant, did not clarify issues for the broader public. Not surprisingly, therefore, it took some time for states and school districts to submit proposals for innovative reform. Instead, most early waivers sought to maintain the *status quo* for one to three years, particularly with respect to school eligibility. Only gradually did applicants realize how waivers could increase their ability to use Title I dollars to leverage change. States and local districts thus began to seek—and were granted—waivers for progressive purposes such as innovative schoolwide reform projects or distribution of professional development funds to areas of greatest need.

The relative paucity of waiver applications—fewer than 500 over a three-year period from the 13,000 Title I school districts within the United States—and the small number of provisions for which waivers were requested suggest that the law is workable as written. States and school districts have not felt so overwhelmed by the requirements of the new law that they have flocked to the federal government for relief, and many of those that did apply for waivers need not have done so: the high percentage of requests returned by the Department indicates that many applicants had not carefully read the law and thus had not realized the degree of flexibility within the amended Title I. The ESEA thus "appear[s] to provide most states, school districts, and schools with enough flexibility to accomplish their objectives without waivers of federal requirements."[24]

However, there is still the very real possibility that the low number of waiver requests reflects, in part, the fact that many school officials either do not fully comprehend their obligations under Title I or do not take them seriously. Such a possibility is made more real by the Department's emphasis on flexibility rather than on accountability in its guidance, past laxity in enforcement, and its interpretations of the law which suggest, among other things, that weak standards and assessments are permissible.

Waivers, on their face, still are of some concern. In the wrong hands, such as those of an administration not dedicated to insisting that reforms meet the needs of poor children, waivers could be used to undermine the intent underlying Title I. But, to date, the process has been administered fairly and waivers do not appear to have contravened the purposes of the law.

Endnotes

[1] See the Improving America's Schools Act, Public Law No. 103-382, 108 Stat. 3518 (1994) (describing the Elementary and Secondary Education Act's (ESEA) general waiver authority, codified at 20 U.S.C.A. § 8881 (Supp. 1998)). This chapter focuses upon the ESEA waiver provision and does not discuss the similar waiver authorities in Goals 2000 § 311, 20 U.S.C.A. § 5891 (Supp. 1998) or the School-to-Work Opportunities Act §§ 501-502, 20 U.S.C.A. §§ 6211-6212 (Supp. 1998).

[2] ESEA § 14401(a), 20 U.S.C.A. § 8881(a) (Supp. 1998) (emphasis added). The Secretary may extend the waiver beyond three years if it has been effective, contributed to improved student performance, and is in the public interest. ESEA § 14401(d), 20 U.S.C.A. § 8881(d) (Supp. 1998).

[3] ESEA § 14401(c), 20 U.S.C.A. § 8881(c) (Supp. 1998). Note 12, *infra*, further discusses maintenance of effort waivers. Also, "[w]hile the ESEA general waiver authority does not permit waivers of requirements relating to the distribution of funds *to* school districts, it does permit waivers affecting the distribution of funds *within* a school district." U.S. Department of Education, *Waivers: Increased Flexibility in Exchange for Increased Accountability, Report to Congress on the Waiver Authorities in the Goals 2000: Educate America Act, the reauthorized Elementary and Secondary Education Act, and the School-to-Work Opportunities Act*, at 8 n. 3 (Sep. 30, 1997) (hereinafter "*Waivers Report*").

[4] Among those documents are the regularly published lists of approved waiver requests. See 60 Federal Register 44,389-44,391 (1995); 61 Federal Register 11,816-11,819 (1996); 61 Federal Register 42,133-42,135 (1996); 62 Federal Register 17,599-17,601 (1997); 62 Federal Register 46,730-46,731 (1997); 63 Federal Register 15,264-15,266 (1998).

[5] See U.S. Department of Education, *The Waiver Action Board and the Waiver Review Process* (Mar. 30, 1995); U.S. Department of Education, *Waivers Report*, *supra* note 3, at 17. The involved program offices are the Office of Elementary and Secondary Education (OESE), the Office of Bilingual Education and Minority Language Affairs (OBEMLA), and the Office of Vocational and Adult Education (OVAE). The Board consists of the Assistant Secretary for OVAE, the Director of OBEMLA, the General Counsel, the Secretary's Senior Advisor for Goals 2000, the Special Advisor to the Secretary on Teaching, and the chair, OESE's Assistant Secretary. The Secretary of Education delegated his waiver authority to the Under Secretary at the same time that he approved the establishment of the Waiver Review Board.

[6] ESEA § 14401(b), 20 U.S.C.A. § 8881(b) (Supp. 1998).

[7] Memorandum from Thomas W. Payzant, U.S. Department of Education, to Chief State School Officers (Nov. 22, 1994).

[8] Letter from Richard W. Riley, Secretary of Education, to Superintendents (Mar. 23, 1995) (emphasis in original). See also letter from Richard W. Riley, Secretary of Education, to Superintendents (Jan. 23, 1995); letter from Richard W. Riley, Secretary of Education, to Governors (Jan. 23, 1995).

[9] U.S. Department of Education, *Promoting Flexibility to Support State and Community Education Reform Efforts: An Overview* (undated).

[10] U.S. Department of Education, *Waiver Guidance for Waivers Available under the Goals 2000: Educate America Act, Elementary and Secondary Education Act, School-to-Work Opportunities Act* (Aug. 1996). The Department issued guidance, rather than regulations, as part of a conscious decision to "implement[ ] all new laws with a minimum of regulations and paperwork." Letter from Richard W. Riley, Secretary of Education, to Superintendents (Jan. 23, 1995).

[11] By the Department's count, as of September 30, 1997, it had received 435 waiver requests, of which 202 were granted, 38 were denied, and 195 were returned or withdrawn. U.S. Department of Education, *Waivers Report*, *supra* note 3, at 3. By December 31, 1997, it had approved 235. 63 Federal Register 15,264 (1998). This table does not exactly tally with those figures because it covers a different time period and counts each action taken (granted, denied, returned) as a separate waiver request. For example, one application may have requested waivers of two sections. If the Department granted a waiver of one section, and denied a waiver of the other, on this table it would count as two decisions. Conversely, if the request was granted for both sections, this table counts it only once.

[12] "Fiscal" waivers do not include requests to waive maintenance of effort requirements. Maintenance of effort has its own specific waiver authority, allowing the Secretary to waive that section's requirements if the Secretary determines that such a waiver would be equitable due to: (1) exceptional or uncontrollable circumstances such as a natural disaster, or (2) a precipitous decline in a school district's financial resources. ESEA § 14502(c), 20 U.S.C.A. § 8891(c) (Supp. 1998).

This chapter tabulates, but does not discuss, waivers of the standards' deadline. For a discussion on that subject, see Chapter III, Standards.

[13] Specifically, the law mandates that a district shall use Title I funds only in eligible school attendance areas, defining those areas as those "in which the percentage of children from low-income families is at least as high as the percentage of children from low-income families in the [district] . . . as a whole." When there are insufficient funds to serve all schools with poverty above the district average, the district must first serve schools where poverty levels exceed 75% (ranked from highest to lowest), then serve the remaining schools in poverty rank order. ESEA § 1113(a), 20 U.S.C.A. § 6313(a) (Supp. 1998). Schools with poverty levels of at least 35% may be considered eligible school attendance areas. ESEA § 1113(b), 20 U.S.C.A. § 6313(b) (Supp. 1998). Section 1113(c), 20 U.S.C.A. § 6313(c) (Supp. 1998), sets forth the formula for allocation of Title I funds.

[14] These factors mirror those enumerated by the Department's General Counsel when she noted that several "interrelated factors" (some echoing statutory requirements) are "particularly significant" when evaluating requests to waive targeting requirements:

- *Is there a **sound educational basis** for the district's proposal?*
- *Has the district demonstrated that the students who would be served if the waiver were to be granted have a **particular need for the services** that would be provided?*
- *Has the district taken measures to **address the needs of students whose Title I services would be reduced** by the waiver?*
- *Has the district described **specific goals that it expects to achieve** if the waiver were to be granted?*
- *Has the district adequately described the methods that would be used to **measure progress in achieving its stated goals**?*
- *Are the services that the district seeks to provide part of an **overall systemic reform strategy**?*
- *In cases involving court or State-ordered desegregation plans, has the district demonstrated **how the waiver would advance desegregation**?*

Memorandum from Judith Winston to the Waiver Board (May 19, 1995) (emphasis in original).

[15] ESEA § 1114(a)(1), 20 U.S.C.A. § 6314(a)(1) (Supp. 1998).

[16] "Success for All" and other reform programs are discussed in Chapter VIII, Good News.

[17] See ESEA § 1119(a)(1), 20 U.S.C.A. § 6320(a)(1) (Supp. 1998).

[18] ESEA § 2206, 20 U.S.C.A. § 6646 (Supp. 1998).

[19] 20 U.S.C.A. § 6646(b) (Supp. 1998).

[20] ESEA § 1113(a)(7), 20 U.S.C.A. § 6313(a)(7) (Supp. 1998). Although the desegregation waiver authority is limited to court- and state-ordered desegregation plans, the existence of a voluntary plan did play a role in the

Department's decisions under its general waiver authority. The decisions often reflect a desire to support these voluntary plans, listing the plans' existence as a factor favoring approval.

More generally, federal education policy long has supported Title I funding for schools participating in desegregation programs, even when such schools normally would be ineligible for Title I grants. Chapter 1, for example, allowed Title I dollars to "follow the child" from eligible attendance areas to ineligible schools when that child met the definition of educational deprivation and was transferred as part of a desegregation plan. See, e.g., U.S. Department of Education, *Chapter 1 Policy Manual: Basic Programs Operated by Local Educational Agencies*, at 60 (Washington, D.C.: U.S. Department of Education undated).

[21] Akron Public School District in **Ohio** requested a waiver under the desegregation waiver authority for which it was not eligible because its desegregation plan was voluntary, not court- or state-ordered. The Department returned the request, asking if Akron wished to pursue its request under the general waiver authority. Akron never responded.

[22] Memorandum from Bill Kincaid, Waiver Review Board, to the Under Secretary, U.S. Department of Education (June 5, 1995).

[23] See, e.g., letter from Margaret Wray, Regional Coordinator, Pennsylvania Department of Education, to David Blatt, Superintendent, Council Rock School District, Pennsylvania (Aug. 11, 1995) (quoting *Preliminary Title I Guidance* issued by the U.S. Department of Education in May 1995).

[24] U.S. Department of Education, *Waivers Report*, *supra* note 3, at 19.

Chapter VIII

Good News

I. Introduction

Although most parents and educators profess the belief that "all children can learn," until recently there have been few large-scale examples of successful high-poverty schools. In some ways, the Title I reauthorization was premised on a leap of faith that, given high standards, increased accountability, and targeted resources, large-scale improvements would happen. Now, after operating for three years under the new Title I, and assisted by initiatives catalyzed by Goals 2000, the New American Schools program, and state reform efforts, the number of school success stories is steadily increasing.[1] Numerous school improvement programs have begun to "scale up," bringing reform to hundreds rather than just a handful of schools. Entire districts are beginning to implement reforms based on research about effective schooling for disadvantaged students. Significantly, there is now evidence that these heightened reform efforts are improving achievement districtwide, rather than just for individual isolated schools.

The growing numbers of high-achieving high-poverty schools refute the negativism of many educators, policymakers, and others who believe that poor and minority children have a diminished ability to learn.[2] These success stories shift the focus of debate from what is wrong with kids (or their parents) to what schools can do to level the playing field and provide opportunities to learn.

This chapter features three cities—San Antonio, Texas; Philadelphia, Pennsylvania; and Memphis, Tennessee—where schools serving largely poor and minority populations are improving steadily as a result of aggressive, districtwide reforms. With strong community support, and even stronger leadership, these districts have overcome numerous barriers to student achievement. In the following profiles, we describe the districts, their leaders, their reforms, and their results. We note the support for—and the resistance to—these reforms, and the role of the states in helping (and sometimes hindering) school improvement.

II. Success in San Antonio

Four years ago, the San Antonio Independent School District was the antithesis of a success story. It was in trouble with the state because so few of its students could pass any section of the Texas Assessment of Academic Skills (TAAS).[3] In 1993, the year before Diana Lam took over as Superintendent, 40 schools were rated by the state as "low-performing campuses," the lowest possible rating. By the 1997-98 school year, there were only six "low-performing" campuses, and five schools had been awarded the state's second highest rating as "recognized" campuses.[4] (See Figure 1 for demographic data.)

A. No Tinkering on the Edges

Superintendent Lam credits achievement gains to four factors: (1) dedicated teachers; (2) supportive parents; (3) the state's accountability system; and (4) a focus on whole school change. The district also employs comprehensive, ongoing use of data to drive planning and instruction and to monitor results. Data for every individual student, every teacher, and every campus are constantly tracked.

Figure 1. San Antonio Independent School District (I.S.D.)

San Antonio has the sixth largest city school system in Texas. In the 1996-97 school year, it enrolled approximately 60,000 students—84% Hispanic, 11% African American, and 5% white. More than 91% of the students are economically disadvantaged, and about 15% have limited proficiency in English.

Source: Texas Education Agency, *Snapshot 1996-97 San Antonio ISD, <http://www.tea.state.tx.us/cgi/broker?_service=hogg&_program=melinda.snap.97ds.sas&search>* (visited July 22, 1998); San Antonio Independent School District, *The SAISD Students 1996-97 School Year, <http://www.san-antonio.isd.tenet.edu/MIS_HIST?Students.htm>* (visited Apr. 30, 1998).

Superintendent Lam and her staff did not tinker with one piece of the problem at a time. Using New American Schools design models such as Roots and Wings and Expeditionary Learning (see Figure 10), along with other approaches, the central office focused intensely on school reorganization, curriculum, and instruction. Any districtwide reform initiative proposed for implementation had to meet four criteria:

- a strong research base;
- sound professional development, not one-shot workshops;
- a bilingual component; and
- an evaluation which evidenced prior success with urban minority children.

Based on these four criteria, district officials selected curriculum materials and instructional strategies (such as the University of Chicago School Mathematics Program and the Balanced Literacy Reading Model) to promote achievement. The district carefully monitored the results of implemented programs to determine if money that was being spent on new curriculum and teacher training was affecting achievement.[5]

B. Impact of 1994 Title I Amendments

Two changes in the 1994 Title I law contributed to San Antonio's progress in raising achievement. First, the new law lowered the threshold poverty level for schoolwide projects from 75% to 50%, allowing all of the district's schools to implement comprehensive schoolwide change. Title I funds, and the flexibility to use them schoolwide, enabled the district to purchase materials and curriculum programs, as well as to invest in training in new instructional strategies across the board. Second, the new law, in contrast to the pre-1994 law, prohibits the withdrawal of Title I funds as achievement rises. Indeed, the relatively simple, but little noticed, change in allocating Title I funds based solely on counts of low-income students, rather than test scores, has enabled San Antonio (as well as other districts) to raise standards and achievement and to implement comprehensive reform, such as that promoted by Congress's new Comprehensive School Reform Demonstration Program. (See Chapter VI, Capacity-Building, for more information on the Comprehensive School Reform Demonstration Program.)

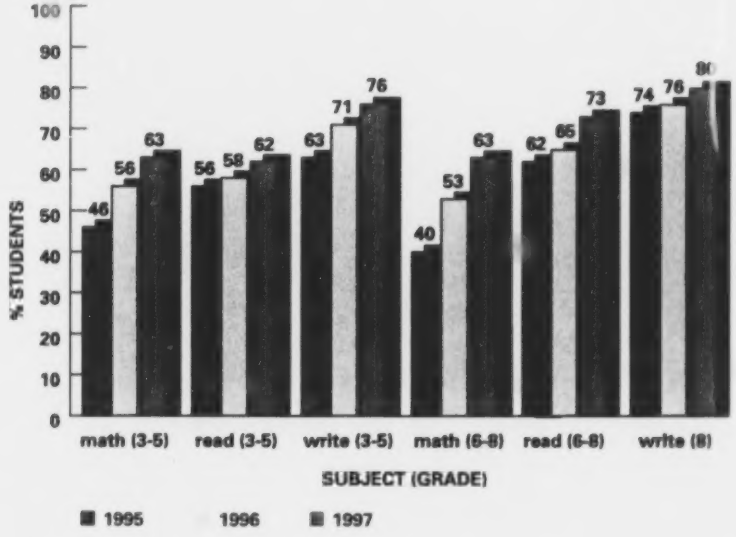
C. Achieving Results

With its reforms now in place, San Antonio has made steady gains in achievement across all grades and all students since 1994. Districtwide, the percentage of students mastering each subject on the TAAS has increased by 15 percentage points in reading (to 71.3%) and writing (to 75.3%). The gain of 30 percentage points in mathematics has brought the district average to 64.8%.[6]

In many categories, achievement gains were greater for the district's poor and minority students than they were for all students within the district. (See Figure 2 and Figure 3.)

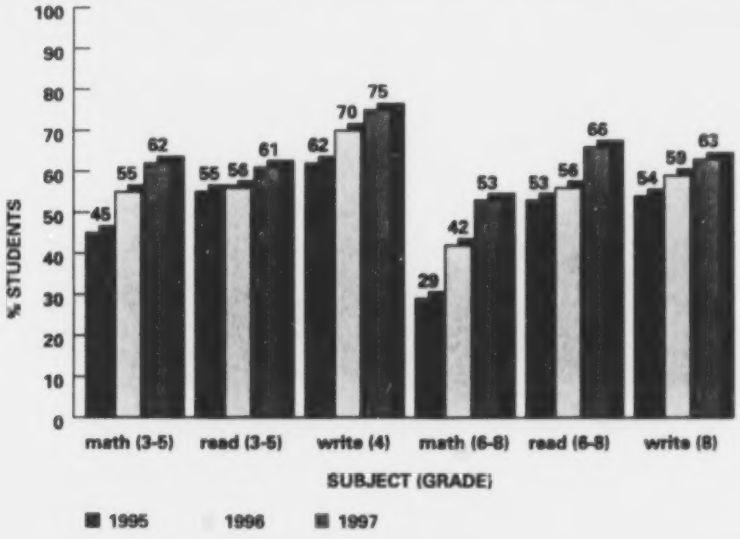
In three years (from 1994-95 to 1996-97), for example, the percentage of low-income fourth-graders passing the reading test moved from 53% to 61%; the percent passing the writing test went from 62% to 75%; and the percent passing math jumped from 40% to 61%. Hispanic and African American stu-

Figure 2. San Antonio I.S.D. TAAS Results Percent of All Students (Not in Special Education) Passing



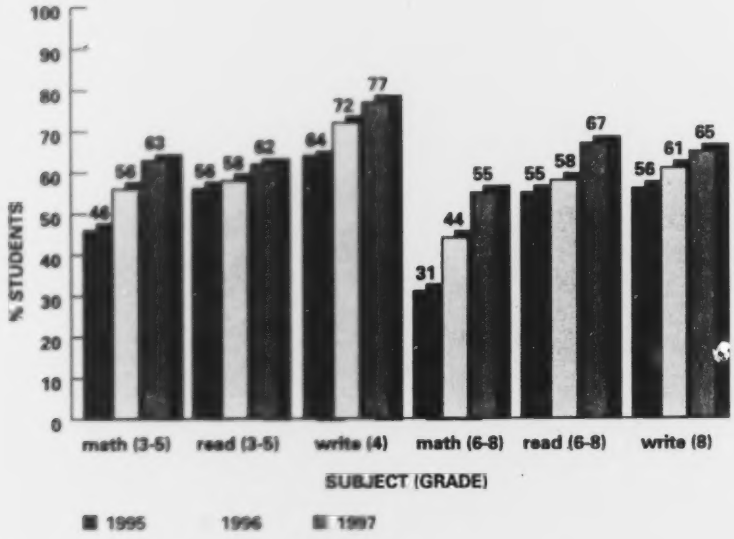
Source: San Antonio Independent School District Testing Department

Figure 3. San Antonio I.S.D. TAAS Results Percent of Economically Disadvantaged Students Passing



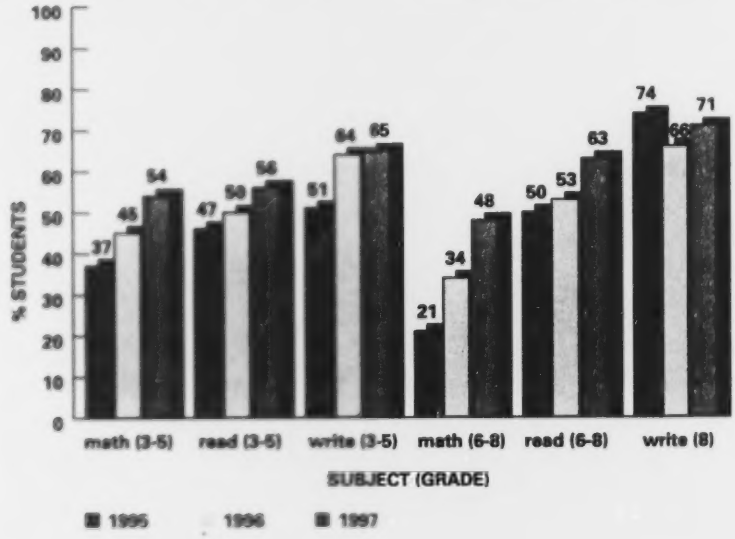
Source: San Antonio Independent School District Testing Department.

Figure 4. San Antonio I.S.D. TAAS Results Percent of Hispanic Students Passing



Source: San Antonio Independent School District Testing Department

Figure 5. San Antonio I.S.D. TAAS Results Percent of African American Students Passing



Source: San Antonio Independent School District Testing Department

dents achieved comparable increases, as shown in Figures 4 and 5.

Preliminary results from the 1998 TAAS, a test the state requires for high school graduation, are equally promising. The percentage of all students (except special education and some limited English proficient students who were not tested) passing on their first attempt has shown steady improvement, although still below the state average. The percentage of San Antonio tenth graders passing each part of the exit level TAAS on the first attempt in 1998, compared with 1994, has risen from 74% to 80% in writing, from 60% to 77% in reading, and from 35% to 59% in math.

At the elementary school level, preliminary 1998 TAAS results continue to show improved student performance districtwide. The percentage of students mastering reading rose 10 percentage points in the third and fifth grades, and eighth-grade students gained 13 percentage points in mathematics.[7] Individual schools showed similar improvement. (See Figure 6.)

D. Remaining Challenges

As San Antonio closes the gap between its performance and statewide achievement levels, it confronts four challenges. First, math achievement lags behind reading and writing. Second, achievement levels tend to fall off after the fifth grade. Third, there remains a substantial gap in achievement between Hispanic and African American students and state averages. Fourth, although African American and Hispanic tenth graders have made remarkable progress on the exit-level TAAS, they are still far below their white classmates and the statewide pass rate in mathematics and reading. Yet San Antonio has made considerable progress, and promises to continue to do so in the future.

Figure 6. San Antonio School Success Story

Burnet Elementary School may be one of the most successful San Antonio schools. In 1997, Burnet was rated a "low performing" campus—but early results from the 1998 TAAS indicate it may have just earned "recognized" status, the second highest rating in the Texas accountability system. Its student population, drawn entirely from a local housing project, have raised their mastery levels in every grade and subject tested. The results show 27 point increases in fourth-grade math and writing, and a 60 percentage point jump in third-grade math. The principal attributes the increases to a "combination of factors," including the district's use of a hands-on approach to learning math developed at the University of Chicago, the Roots and Wings model that the school has adopted, an intensive daily tutoring program involving all school staff, and a committed staff. Title I dollars have helped to fund both the tutoring program and the salary for a facilitator to work with the teaching staff in implementing Roots and Wings.

Sources: San Antonio Independent School District News Release, *Early Indicators Point to Success of SAISD Reforms* (May 29, 1998); telephone interview with Linda Frith, Principal, Burnet Elementary School (Feb. 1, 1999).

III. The Philadelphia Story

In 1994, Philadelphia's public schools were failing by most any measure used. Seventy percent of primary age children could not read at grade level. Nearly half of ninth graders failed that grade. The average score for Philadelphia high school students on the math subtest of the Scholastic Aptitude Test was 55 points below the state average. The district tracked its students from the early grades through high school, thus further retarding students' learning. Children with limited English proficiency lacked effective language support. The district's schools were overcrowded, impersonal, inadequately maintained, and unsafe. All of these failures, evaluators concluded, stemmed from "a lack of will on the part of policy-makers, educators and the wider public to implement change, not in specific schools or programs, but system-wide."[8]

A. Children Achieving

Under the leadership of Superintendent David W. Hornbeck since 1994, the School District of Philadelphia has embarked on an ambitious districtwide campaign to reverse years of educational decline in this large, urban school district. (See Figure 7.) Mr. Hornbeck faces a challenging job. Thirty percent of the city's children live below the poverty line according to 1990 census figures, compared with 16% statewide. Poverty levels are so high that 240 of Philadelphia's 258 schools are classified as "universal feeding sites" where all students within the school are eligible for free/reduced-price lunches. Four times more of the city's children live in neighborhoods with concentrated poverty than in all the rest of Pennsylvania. This largely African American district operates under a state court-ordered desegregation plan. School enrollment is growing, with a 10.7% increase since the 1991-92 school year, but with less state aid to support the increased student population. Despite a high local tax burden, Philadelphia spends about $2,000 less per student than the surrounding suburbs, and is embroiled in litigation with the state over school financing.[9]

Figure 7. The School District of Philadelphia

Philadelphia was the sixth largest school district in the nation in 1996-97, with 215,000 students. Thirty percent of its students live below the poverty line, and nearly all are eligible for free and reduced-price lunch. Its student body is 64% African American, 19% white, 12% Latino, and 5% Asian. Approximately 30,000 students are not native English speakers, and 10,000 of those students are enrolled in English as a Second Language/bilingual classes.

Sources: Education Week, *Quality Counts '98: The Urban Challenge: Public Education in the 50 States*, at 233 (Jan. 8, 1998); telephone interview with Kevin Casey, Coordinator, Division of Food Services, School District of Philadelphia (July 16, 1998); information provided by Mary Ramirez, Director, Office of Language Equity Issues, School District of Philadelphia, and by Alli Meelvikell, Title I Director, School District of Philadelphia.

Hornbeck's campaign, known as "Children Achieving," has set a goal for every district school to have high achievement within 12 years (one student generation). To achieve this goal, the district has forged ahead with comprehensive reforms, including the adoption of its own content standards in the absence of state standards, increased professional development (funded partly with Title I funds), an increase in the number of teachers who are certified, and the establishment of small learning communities. Students and their families have been provided supports such as full-day kindergarten, after-school programs, adequate textbooks and materials in major subjects, more technology, support for English language learners, and services for students with disabilities.

Performance goals for the superintendent and top central office administrators have also been set, based on systemwide progress toward the same objective. As one Philadelphia educator concluded, Children Achieving "focused us and gave us a goal."[10]

If funding can be found, there are plans to start summer schools for students in grades three, four, seven, eight, and eleven beginning in 1999 (currently, summer school is available only to twelfth graders); to provide intensive tutoring; and to reduce class size in kindergarten through grade three. Once these last three reforms are enacted, the district will end social promotion, conduct citywide exams, and require students to complete three interdisciplinary and community service projects during their school careers.

Philadelphia's road to comprehensive reform has been a rocky one. Even with grants from the Annenberg Foundation and the Pew Charitable Trusts, financing these reforms has been—and continues to be—an uphill battle. The district has borrowed money from local banks to make up for budget shortfalls, which the state refused to cover because, it argued, Philadelphia already was receiving more than its fair share. The district disagrees, and has challenged the state school finance system in both state and federal courts. The antagonism between state and local officials is also reflected in the recent passage of a law authorizing a possible state takeover of city schools, and legislative proposals to break up the school district and to fund vouchers. Further, the

district received little guidance from the state on standards and accountability systems: the district instituted its own policies before the state had done so (the state board adopted standards in the spring of 1998). District reformers also have tangled with the teachers' union, parents confused by new reform jargon, and the judge presiding over the district desegregation case.[11]

B. The Professional Responsibility Index

Despite such opposition, the district has already put in place an accountability system that the school board devised to measure school progress toward the 12-year goal. Philadelphia measures the progress of the district and each of its schools by the Professional Responsibility Index, a composite of student test scores, student and teacher attendance, promotion rates (for elementary and middle schools), and persistence rates (for high schools). The Index uses scores from the Stanford Achievement Test-ninth edition (SAT-9), a combination of multiple choice and open-ended questions that requires both writing and analytical skills. Almost all students in grades four, eight, and eleven take the SAT-9. The only students not tested are those who are fluent in neither English nor their home language, who are severely disabled, or who are specifically exempted by their Individual Educational Plan. Students in Spanish bilingual classes also take Apprenda II, a Spanish-language test of reading and mathematics.[12]

Philadelphia teachers, working with the test publisher, developed seven performance levels, or student performance standards, on the SAT-9. The seventh level indicates students who are not tested. Scores from each level are added to arrive at a total score for each subject tested. Promotion and persistence rates, and student and staff attendance (called enabling scores), are similarly assigned performance levels.[13] These composite scores are used to calculate a baseline index for each school. The baseline index is subtracted from the 12-year goal of 95—the goal of Children Achieving—in order to determine the growth target, or adequate yearly progress, for each school. In addition to the growth target, schools also must achieve a ten-point reduction in the percentage of students below the basic level.[14]

The "not tested" performance level serves as an incentive to include students in the assessment, unlike some districts' practice of excluding the potentially lowest-scoring students. The effectiveness of this incentive to include students is readily apparent: in just one year's time, from Spring 1996 to Spring 1997, the percentage of "not tested" students citywide in reading dropped from 24.9% to 12.7%, in mathematics from 29.7% to 17.3%, and in science from 30.7% to 17.2%.

Notably, the Index incorporates Title I's requirements for substantial and continuous growth and multiple measures. The goal of a 95 index in 12 years is certainly substantial. Further, the larger weights assigned to the higher performance levels and the 10% reduction of below-basic scores are an incentive for making continuous progress at both ends of the score distribution. But test scores are not the only measure of progress: promotion and persistence rates also count. Thus, schools can raise their scores by having near-perfect attendance of students and staff.[15]

C. Citywide Gains in Student Achievement

The impact of the Children Achieving reforms already are being felt. (See Figure 8.) In just one year, from 1996 to 1997, Philadelphia school children posted remarkable gains on the SAT-9. Fourth graders led the way: the numbers scoring at the basic, proficient, and advanced levels increased by 16% in reading, by 14% in math, and by 21% in science. Sixty-eight elementary schools posted at least a five percentage point gain in reading, math, and science. Twenty-nine elementary schools, however, did not make a five-point gain in any subject, and performance in the eighth and eleventh grades lagged behind that of the fourth grade.[16]

Figure 8. A Philadelphian Profile of Progress

The Chester A. Arthur Elementary School made notable gains in achievement and attendance between 1995-96 and 1996-97. This K-4 elementary school is largely (98%) African American, and 96% of its students come from low-income families. Despite obstacles, the school's overall scores jumped from 54.9 to 61.5 in reading, from 57.0 to 60.3 in mathematics, and from 54.2 to 62.1 in science. At the same time, the percent of students not tested in science dropped dramatically from 13% in 1995-96 to only 3% in 1996-97. Student attendance increased from 84% to 90.4%, and staff attendance increased from 85.7% to 91.6%.

Sources: School District of Philadelphia, *Chester A. Arthur School: School Profile, <http://www2.phila.k12.pa.us/profiles/profiles.qry?function=search&locnumlog=(2480)>* (visited Aug. 13, 1998); School District of Philadelphia, *School Performance Index Chester A. Arthur School, <http://www2.phila.k12.pa.us/sat9/perf_index.qry?function=search&locnum=248>* (visited Aug. 13, 1998).

The most recent test data shows continuing progress. In 1998, for the second year in a row, students in grades four, eight, and eleven scored higher on the SAT-9—an average 11.2 points higher than two years ago. The largest achievement gains (12 to 15 points) were posted by fourth graders, children who were in the first grade when Children Achieving began and thus have benefitted the most from reform. Eighth graders also showed significant gains: the percentage of students scoring at the basic level or above was 10 to 13 points higher. Further, scores improved at the same time that the number of students taking the test increased by 15.7% compared to 1996. Notably, the number of limited English proficient students who completed the test rose by 27.9%, and the number of disabled students who completed the test rose by 36.5%.[17]

Although Philadelphia still has a long way to go, it has made great strides in improving student performance. Its successes demonstrate the advantages of implementing reform at the district level. In the words of one Philadelphia educator: "The role of the district is to take advantage of economies of scale and leverage, and to make the necessary policy changes. Schools have to tell us what the barriers are, and then we create the policies that will eliminate those barriers."[18] The result is that "*Children Achieving* cheers you on. You don't feel like you're alone. Now it is the whole district that is behind you."[19] Further, the effectiveness of Philadelphia's reforms provides evidence that Title I concepts—such as the requirement for continuous and substantial progress—can work in practice. While Superintendent Hornbeck supplied the vision and systemic plan for districtwide change, he has not acted alone. With political will (at least at the local level), community support, and money, the key elements of Children Achieving are replicable elsewhere.

IV. Making Progress in Memphis

A. The Reforms

Memphis is serious about reform. It needs to be. It is the largest school district in the state (see Figure 9)—and it is one of Tennessee's worst-performing systems. In 1995, only 49% of Memphis' ninth graders passed the state's minimum competency test (compared with 71% statewide). Memphis students score below the state average in every subject and in every grade on the Tennessee Comprehensive Assessment Program (TCAP), the standardized statewide student assessment. Attendance, too, is below the state average, while the high-school dropout rate, at 35%, is double the state average.[20]

Dr. N. Gerry House, Superintendent of Memphis City Schools since 1992, is "determined to break this cycle of failure and to break it now."[21] Arguing that it is the schools, not the children, that have failed, she has begun a thorough restructuring of the district. Soon after she became Superintendent, she began decentralizing district management. She reduced

Figure 9. Memphis City Schools

With 112,000 students and 161 schools, Memphis has Tennessee's largest school district and the 20th largest metropolitan school system in the United States. Its student body is 84% African American, 14% white, and 2% other. Seventy-one percent of its students qualify for free or reduced-price lunch.

Sources: Memphis City Schools, *About MCS: Facts about Memphis City Schools 1997-98, <http://www.memphis-schools.k12.tn.us>* (visited June 16, 1998); New American Schools, *Transforming Districts: Memphis, <http://www.naschools.org/districts_c_memphis.html>* (visited June 16, 1998).

the executive leadership team to six people (including the Superintendent and the Executive Director for School Redesign, Training, and Development), increased communication between individual schools and the central office, and created site-based decision-making councils at each school. She also gave principals more authority over budgeting.

With increased responsibility has come increased accountability: the district requires each school to draft a school improvement plan, and principals' evaluations are based partially upon student performance. Students themselves are judged under new academic content standards written with the advice of teachers, parents, community members, business and civic leaders, local university professors, and national experts. Memphis tests its students using a variety of measures, including the TCAP, grades, and portfolios. The district currently is creating its own performance assessments, and, in conjunction with IBM, a digital portfolio system which, among other things, would allow students' work to be scanned into a computer system and stored throughout their educational careers.[22]

The most far-reaching changes, however, have come since the New American Schools (NAS) program selected Memphis in 1995 as 1 of 11 "jurisdictions" out of 686 proposals to implement NAS designs over a 5-year period. (See Figure 10.)

Implementation of a design required the agreement of 60% of the faculty and 90% of the school leadership council, composed of the principal plus teacher, parent, and community representatives. After reviewing design information, the council submitted a Letter of Intent to the district. Based upon these letters and district resources, a committee selected 34 schools to proceed with their chosen designs in 1995-96. An additional 14 schools began redesign models in 1996-97, and 26 more began in 1997. All remaining Memphis schools must begin implementing 1 of 18 approved redesign models in the 1998-99 school year.[23]

Memphis now is one of the most advanced NAS jurisdictions, with an extraordinary number of schools implementing schoolwide reforms. In the 1997-98 school year, nearly half of the district's 161 schools had adopted an NAS design or implemented either Accelerated Schools or Paideia: 22 schools (all Title I schools) used Roots and Wings, 7 used Co-NECT, 6 used ATLAS, 6 used Audrey Cohen/Purpose-Centered Education, 5 used Expeditionary Learning Outward Bound, 4 used Modern Red Schoolhouse, and 23 used either Accelerated Schools or Paideia. Schools also are piloting locally developed designs, such as Arts Integration, and other national designs, such as Core Knowledge and Multiple Intelligences.[24] Of the 70 Title I elementary schools with schoolwide programs, 42 had implemented a design model in 1997-98, most of them using either Roots and Wings or Accelerated Schools.[25] According to NAS President John Anderson, with the help of NAS design teams and a central-office facilitator, Memphis redesign schools "have reshaped their lessons, their instruction, their assessments, their student assignment practices and their professional development based on research-tested ideas."[26]

The community has rallied behind the changes in Memphis. Businesses raised $5.4 million to finance restructuring efforts, including a professional development center and support for NAS design teams. Memphis Mayor Willie H. Herenton, a former superintendent of Memphis City Schools, led the campaign for a $100 million bond issue for capital improvements to city schools. The reforms also have garnered support from the teachers' union: teachers pledged to help implement reform designs in their

Figure 10. New American Schools

Founded in 1991, New American Schools (NAS) is a privately financed, bipartisan, nonprofit corporation based in Arlington, VA. Its mission is to improve all students' academic achievement through research-based comprehensive school reform designs developed by NAS design teams. These designs include:

- **ATLAS:** ATLAS aims to create a unified, supportive, collaborative community of learners with a participatory governance structure based on broad consensus and interdisciplinary curriculum. Student exhibitions are intended to demonstrate mastery of essential skills, habits, and knowledge. For grades K-12.

- **Audrey Cohen College/Purpose-Centered Education:** Endeavors to redesign the entire school setting, including curriculum, to achieve meaningful "purposes." Leadership, scholarship, and high standards are emphasized, as is the commitment to "constructive action" to benefit the community and larger world. For grades K-12.

- **Co-NECT:** Co-NECT aspires to use technology to enhance every aspect of teaching, learning, professional development, and school management. Teaching and learning revolve around interdisciplinary projects that promote critical skills and academic understanding, as well as integrating technology. For grades K-12.

- **Expeditionary Learning Outward Bound (ELOB):** ELOB proposes to improve student achievement and build character through "learning expeditions": long-term, academically rigorous, interdisciplinary studies requiring students to work inside and outside the classroom. In ELOB schools, students and teachers stay together for more than one year, teachers work collaboratively, and tracking is eliminated. For grades K-12.

- **Modern Red Schoolhouse:** This design combines traditional, long-standing American education principles with new instructional methods and technology. Students are expected to master a rigorous curriculum, develop character, and promote the principles of democratic government. For grades K-12.

- **Roots and Wings:** Building upon the widely used Success for All reading program, this design incorporates science, history, and math to achieve a comprehensive academic program. Believing that schools must do whatever it takes to ensure all students succeed, Roots and Wings schools provide at-risk students with tutors, family support, and other services. For grades K-6.

In 1996-97, more than 700 schools in 26 states were using NAS designs.

Sources: New American Schools, *Great Schools By Design: 1996-1997 Annual Report;* Steven M. Ross *et al., The Memphis Restructuring Initiative: Achievement Results for Years 1 and 2 on the Tennessee Value-Added Assessment System (TVAAS): A Special Report Prepared for Memphis City Schools* (June 1998).

schools and, if they did not agree with the design, they were voluntarily reassigned to another school. In fact, in 1997 Memphis won a National Education Association "Saturn" award for its strong collaborative relationship with its teachers' union.[27]

The chief obstacle to Memphis' reform efforts has been the rapidity of the change. Memphis had less than six months to prepare for the initial implementation of NAS designs. Studies suggest that, with little time to choose, some schools selected designs based on limited information and lacked the readiness to implement the design fully. Further, not all teachers were comfortable with their new authority, nor were they prepared to rewrite curriculum or create new instructional materials as some (but not all) designs required. Although Memphis created a Teaching and Learning Academy to provide professional development for schoolwide reform, at least one researcher identified inadequate time for professional development as the primary obstacle to the successful implementation of NAS designs in Memphis.[28]

The state's role in this change has been ambivalent. The consensus, as gauged by *Education Week*, appears to be that the state has not done much to either handicap or help urban districts like Memphis. Since its school financing system was declared unconstitutional in 1992, the state has dramatically increased school funding. It also has freed some "break the mold" districts, including Memphis, from certain state regulations in exchange for increased accountability. But, in accord with Title I's requirements for statewide assessments, and despite district protests, the State still requires Memphis to participate in TCAP, the criticized state assessment. Critics such as Susan Bodilly, a senior social scientist at the Rand Corporation, argue that the assessment "is an old-fashioned bubble test that only measures students' ability to regurgitate a narrow array of content" and thus impedes innovation by encouraging teachers to instead use traditional teaching methods. James Guthrie, Director of the Peabody Center for Education Policy at Vanderbilt University, maintains that "there is a mismatch between what the state test measures and what schools teach." Memphis teachers and administrators themselves perceive a disconnection in the fit between design-based teaching orientations and the more "skills-based" learning tested by the TCAP.[29]

B. The Results

Despite fears that the NAS designs' achievements would not be reflected in the TCAP because of the perceived mismatch between what was tested and what was taught, Memphis school reforms already have yielded impressive results. Overall, the district's students' writing scores have increased in grades four, eight, and eleven. The percent of graduates taking three years of college preparatory math and science has increased from 41% in 1994-95 to about 66% in 1998. Schools are becoming more student-centered, and students are more cooperative. Parents are becoming more involved in their children's education. And teachers have adopted a more active, hands-on instructional approach.[30] (See also Figure 11.)

Figure 11. Memphis School Profile

Cummings Elementary, a Title I schoolwide project implementing Roots and Wings, demonstrates what comprehensive school reform can achieve. Nearly 99% of its students qualify for free or reduced-price lunch, and all of its students are African American. This K-6 school already has exceeded the state's 1999-2000 goal in three out of five TCAP subjects, posting national norm gains on the TCAP achievement test of 103.7% in math, 106.1% in reading, and 108.4% in social studies in 1996-97.

Source: Memphis City Schools, *School Report Card: Cummings Elementary School*, <*http://www.memphis-schools.k12.tn.us*> (visited Aug. 13, 1998).

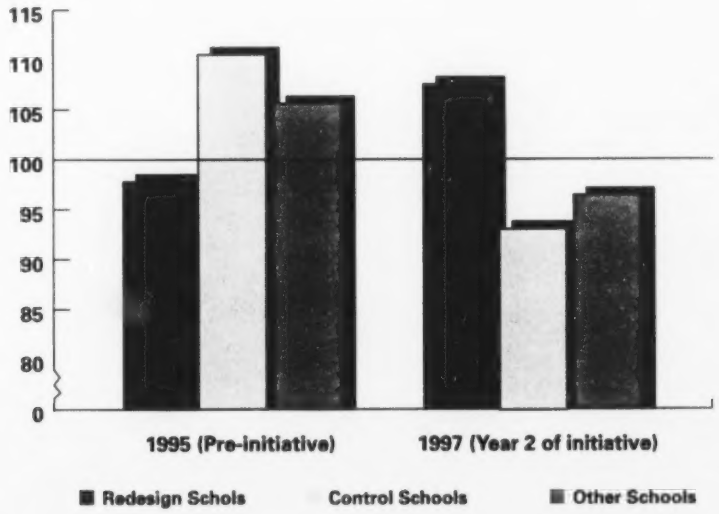
Further, a recent study found strong evidence that the new reform models are having a positive impact on student learning. This study of 25 of the redesigned schools found that, after 2 years, their

achievement gains in all subjects were significantly higher than the national average, than control schools, and than other Memphis elementary schools. Specifically, the 25 schools had an average learning gain of 107.5%, where the national average was 100%, the control schools' was 93%, and other Memphis elementary schools, was 96.4%. (See Figure 12.) Before implementation of the reforms in 1995, these schools had trailed behind similar schools and all other schools in the district in student achievement gains. An author of the study, Steven Ross, noted that the most popular models with Title I schools—Roots and Wings and Accelerated Schools—were the designs that appeared to be doing the best. This suggests that Title I programs may help schools choose designs that are having an impact on performance. The study also confirmed that teachers were employing new methods of teaching, with less passive learning and more teacher planning. Because some experts believe that full implementation of school reform may take at least five years, this data from only the second year may in fact *underestimate* the ultimate benefits of the comprehensive school reform designs.[31]

C. Lessons Learned

Effective reform "requires changing what happens in classrooms every day," according to Samuel Stringfield, a research scientist at Johns Hopkins University.[33] For Memphis to make that change required strong school and district leadership, high-quality teachers, union cooperation, and community support. The Memphis experience also demonstrates the importance of research-based reform models, and adequate professional development and technical assistance. Further, reform requires funding—and Title I grants have played a critical role in financing school reform in Memphis. The result, in the words of one researcher: "The Memphis school district is the best example this country has to offer of a district embracing school reform."[34]

Figure 12. TVAAS[32] Cumulative Percent of Norm Mean (CPN) in Memphis (Percent of National (Expected) Gains Attained)



Source: Memphis City Schools, *Getting Better by Design* (1998), Copyright 1998, Memphis City Schools.

V. Conclusion

These success stories are still the exception, but they need not be. Their reforms and results can be replicated when a community, spurred by sufficient political will, strong leadership from school and government officials, teacher support, and financing, commits itself to change. Title I, by providing critical funding and key reform concepts, can be a lever for educational reform that makes a difference in students' lives.

Endnotes

[1] See, e.g., Olatokunbo S. Fashola and Robert E. Slavin, "Promising Programs for Elementary and Middle Schools: Evidence of Effectiveness and Replicability," 2 *Journal of Education for Students Placed at Risk* 251 (1997) (summarizing available research on the effectiveness of several reform models); Sam Stringfield *et al.*, *Urban and Suburban/Rural Special Strategies for Educating Disadvantaged Children: Findings and Policy Implications of a Longitudinal Study* (Washington, D.C.: U.S. Department of Education 1997) (examining reform models aimed at enhancing learning for at-risk students). Although much of the evidence is anecdotal, there are many strong indicators of success. For example, design teams from New American Schools (see Figure 10) reported that by 1996, many schools had higher attendance and graduation rates and fewer disciplinary incidents. Lynn Olson, "Designs for Learning," *Education Week*, Feb. 12, 1997.

[2] See, e.g., Stringfield *et al.*, *supra* note 1, at 18 (countering "the troubling hypothesis that children of poverty do not merely not achieve, but that they are genetically incapable of achieving at high levels" with their finding that "[d]isadvantaged students in several *Special Strategies* schools began the study far below the national average, yet made academic gains toward or exceeding national means. In some schools the gains were dramatic.").

[3] The Texas Assessment of Academic Skills (TAAS) is administered to grades three to eight and grade ten annually. It measures advanced academic skills and problem solving, as well as basic skills. Scores represent the major ingredient of the state's accreditation ratings for districts and schools. For an explanation of the Texas accountability system, see Chapter V, Accountability.

[4] San Antonio Independent School District Press Release, *Early Indicators Point to Success of SAISD Reforms* (May 29, 1998).

[5] Letter from Melody Johnson, Office of the Superintendent, San Antonio Independent School District (June 9, 1998); letter from Melody Johnson, Office of the Superintendent, San Antonio Independent School District (June 24, 1998).

[6] TAAS data supplied by the San Antonio Independent School District Testing Department.

[7] San Antonio Independent School District Press Release, *supra* note 4.

[8] *A Philadelphia Primer: The School District of Philadelphia Educational Team Report*, at 9, 12, 13, 21 (Sep. 15, 1994) (submitted to Judge Doris A. Smith, Commonwealth Court of Pennsylvania, in the matter of *Pennsylvania Human Relations Commission v. School District of Philadelphia*).

[9] Consortium for Policy Research in Education (CPRE) *et al.*, *A First-Year Evaluation Report of Children Achieving: Philadelphia's Education Reform (Executive Summary 1995-96)* (Philadelphia, PA: CPRE); Education Week, *Quality Counts '98: The Urban Challenge: Public Education in the 50 States*, at 233 (Jan. 8 1998) (hereinafter "*Quality Counts '98*"); Caroline Hendrie, "An Annual Rite in Philadelphia: Hornbeck Duels State Over Budget," *Education Week*, Mar. 18, 1998; telephone interview with Kevin Casey, Coordinator, Division of Food Services, School District of Philadelphia (July 16, 1998). The city's federal suit against the state was filed on March 12, 1998. See *Powell v. Ridge*, 98-cv-122 (E.D. Pa.).

[10] CPRE *et al.*, *supra* note 9; convocation speech by David W. Hornbeck, "Our Children Are Achieving" (Aug. 28, 1997); Richard Jones, "Standards toughened for city schools," *Philadelphia Inquirer*, June 30, 1998, at A1; School District of Philadelphia, *Professional Responsibility System School Performance Index* (undated), <*http://www.philsch.k12.pa.us/Admin/performance_index*> (visited Aug. 12, 1998).

[11] Ann Bradley, "Philadelphia Story," *Education Week*, Feb. 19, 1997; Hendrie, *supra* note 9; Dale Mezzacappa, "Union Opposition Alters Reform Plan in Phila.," *Philadelphia Inquirer*, Apr. 6, 1995, at B1; Kerry A. White, "Phila. Budget Passes, Easing Takeover Threat," *Education Week*, June 10, 1998.

[12] "With respect to subjects other than English, students who are or have been eligible for ESOL [English as a Second Language] services ('English Language Learners') will be expected to meet the same standards as other students, although they may be tested in their home language, have testing accommodations, or be tested by a validated alternative assessment tool." School District of Philadelphia, Office of Language Equity Issues, *Special Requirements for Students Whose First Language is Not English* (undated).

[13] The promotion rate is the percentage of students in grades one through eight that are promoted either by policy or by exception, while the persistence rate measures the proportion of first-time ninth graders who graduate from a Philadelphia School District high school four years later. The Citizens' Commission is somewhat concerned that the high targets for promotion, if measured from grade to grade, could encourage social promotion. However, the Philadelphia Board of Education, as discussed above, has taken a strong stand against social promotion by committing itself to a five-year plan to end social promotion if a series of academic supports are put into place.

[14] School District of Philadelphia, *supra* note 10.

[15] *Id.*

[16] School District of Philadelphia, *Briefing Packet, Spring 1997 Results Stanford Achievement Test (Ninth Edition)* (Sep. 2, 1997). See also Caroline Hendrie, "Hornbeck Trumpets Improved Test Scores in Philadelphia," *Education Week*, Sep. 17, 1997.

[17] School District of Philadelphia News Release, *Citywide Test Scores Rise for Second Year; More than Ten-Point Gain for First Accountability Cycle* (Aug. 24, 1998); Remarks by David W. Hornbeck, Superintendent of Schools, before the Board of Education, on the Achievement of Philadelphia Students 1996-1998 (Aug. 24, 1998).

[18] CPRE *et al.*, *supra* note 9, at 15.

[19] *Id.* at 17.

[20] Olson, *supra* note 1; *Quality Counts '98*, *supra* note 9, at 244.

[21] Olson, *supra* note 1.

[22] Kevin McKenzie, "IBM Grants $875,000 to Memphis City Schools," *Knight-Ridder/Tribune Business News*, Oct. 27, 1997; Olson, *supra* note 1; *Quality Counts '98*, *supra* note 9, at 244; information supplied by Memphis City Schools' Communications Department.

[23] Memphis City Schools, *Getting Better By Design* (1998) (hereinafter "*Getting Better*"); Memphis City Schools News Release, *Report Finds Student Achievement Gains in Redesign Schools* (May 18, 1998); Olson, *supra* note 1; *Quality Counts '98*, *supra* note 9, at 244; Steven M. Ross *et al.*, *The Memphis Restructuring Initiative: Achievement Results for Years 1 and 2 on the Tennessee Value-Added Assessment System (TVAAS): A Special Report Prepared for Memphis City Schools* (June 1998).

[24] Susan Bodilly *et al.*, *Lessons from new American Schools' scale-up phase: Prospects for bringing designs to multiple schools* (Santa Monica, CA: RAND 1998); Memphis City Schools, *Getting Better*, *supra* note 23; New American Schools, *Transforming Districts: Memphis*, <*http://www.naschools.org/ districts_c_memphis.html*> (visited June 16, 1998); Olson, *supra* note 1.

[25] Memphis City Schools, *Title I Schools 1997-98 Schoolwide Projects*; telephone interview with Steven M. Ross, The Center for Research in Educational Policy, The University of Memphis (July 17, 1998).

[26] Memphis City Schools News Release, *supra* note 23.

[27] Olson, *supra* note 1; *Quality Counts '98*, *supra* note 9, at 245.

[28] Olson, *supra* note 1; *Quality Counts '98*, *supra* note 9, at 247.

[29] *Quality Counts '98*, *supra* note 9, at 244-45, 247; Ross *et al.*, *supra* note 23.

[30] Memphis City Schools News Release, *Test Scores Remain Stable* (June 22, 1998); Lynn Olson, "Memphis Study Tracks Gains in Whole-School Designs," *Education Week*, May 27, 1998; *Quality Counts '98*, *supra* note 9, at 245.

[31] See Ross *et al.*, *supra* note 23; Olson, *supra* note 30; Memphis City Schools News Release, *supra* note 23; New American Schools Press Release, *Schools Using Comprehensive Reform Designs Record Impressive Test Score Gains, New Study Shows* (June 2, 1998); telephone interview with Steven M. Ross, *supra* note 25.

[32] The Tennessee Value-Added Assessment System (TVAAS) is

> *designed to provide unbiased estimates of the influences that school systems, schools, and teachers have on the academic gains of students. Specifically, it uses scale scores from the norm-referenced components of TCAP as input into a statistical mixed-model process to produce these estimates. . . . From this process, estimates of mean academic gain are provided for each of five subjects [reading, language, math, science, and social studies]. These gains are then compared against the national norm gains for the particular grade and subject. These norms comprise the 'expected' gain for each student, regardless of where his/her score ranks on the percentile scale.*

Ross *et al.*, *supra* note 23.

[33] Lynn Olson, "Teachers Need Nuts, Bolts of Reforms, Experts Say," *Education Week*, Apr. 30, 1997.

[34] Olson, *supra* note 1 (quoting Samuel Stringfield).

Chapter IX

Conclusion

While debate continues about the general health of American public education, almost all knowledgeable people agree that schooling for poor children is in a crisis state. Many poor children, particularly children of color, live and attend school in circumstances of concentrated poverty. In these high-poverty schools they are often taught by underqualified teachers and they generally have less access to needed resources and services such as preschool, early reading programs, counseling, smaller class sizes, and professional development for their teachers.

In addition, poor children with special needs, such as students with disabilities and those with limited proficiency in English, find these needs unaddressed in public schools. And the standards and expectations set for economically disadvantaged children, both those in high-poverty schools and those assigned to the lower tracks of other schools, are far lower than those set for other students.

As a result, many disadvantaged youngsters are performing poorly in school and are emerging without the knowledge and skills that would enable them to be productive and participating citizens in American society.

The fault for these conditions lies not in our children, but in our schools, in our society, and in ourselves. If any doubt existed on this score, it should have been extinguished by the great academic progress that many black and Latino students who once were shackled by segregation and other forms of discrimination achieved once these restraints were lifted. The strides made by these youngsters in the wake of the civil rights revolution send a clear message that children who are given the opportunity to succeed will make good use of it.

The difficulty is that many have not been given the opportunity, and that in some ways the progress that has already been made is the enemy of future progress. Thus, the easing of racial discrimination in housing has meant opportunities for some, but has increased stratification by income and increased the poverty of schools for those left behind. So too, the breakthroughs in employment opportunities, in business, and in the professions have diminished the captive talent pool of women and minorities that once staffed the teaching profession, making it harder to attract and retain good teachers in inner-city schools. And the economic and technological advances made in recent years have created a demand for a better educated and more highly skilled work force. The development of basic skills, which long had been the undeclared objective of federal education assistance to disadvantaged youngsters, is no longer adequate to meet the needs of a postindustrial economy.

A recognition of these changed circumstances helped fuel a determination in 1994 by education advocates, the Clinton Administration, and Congress to overhaul Title I of the Elementary and Secondary Education Act, the three-decade-old program of federal assistance to state and local agencies for disadvantaged children. While that program had made modest contributions to the advancement of poor and minority students, it was widely recognized that it was inadequate to the needs of the time. Indeed, in ratifying a two-tiered system of education, in sanctioning pulling children out of regular classes for remediation, in failing to focus on the need to upgrade whole schools and school systems, the pre-1994 Title I program had in many ways become an

impediment to progress.

The 1994 effort succeeded in establishing a new national charter for education reform. Premised on a finding that educational success should be expected of all children, the new law called on the states to set high standards for all and to fashion new tools for determining whether the standards were being met. Most important, the law evinced a willingness by the federal government to forego prescriptive regulation, in exchange for a commitment by states, school districts, and individual schools to be held accountable for the progress of children.

This study, the first installment of the Citizens' Commission's review of what has transpired since Congress enacted the 1994 reforms, is a good news/bad news report. The good news is that the Clinton Administration has been steadfast in its commitment to support for public schools and to targeting Title I resources to schools with the greatest needs. It has also advocated increased funding of Title I and other key programs to meet the educational needs of poor children.

Moreover, several states and a number of urban districts have engaged in major reform and are able to report significant progress for poor children. States such as Kentucky, Maryland, and Texas had begun to put the structures of standards-based reform in place even before the 1994 amendments and have been able to use the precepts and resources provided by Title I to make further progress. City districts, such as Philadelphia, San Antonio, and Memphis, have implemented learning strategies that have been shown to work for poor children and professional development programs that have armed teachers with the capability and will to make real change. The results suggest that progress need not be limited to a handful of schools led by dynamic and charismatic principals, but can be replicated more generally.

The bad news is that the Clinton Administration, once a prime advocate of standards-based reform, has since had a massive failure of will and nerve. That failure has been manifested by a refusal to insist that states comply with fundamental provisions of the law, notably the requirement that a single set of high standards be established for all the children in a state. In the Administration's readiness to countenance differing standards and expectations for children—one set for children in more affluent suburbs and another for poor children in inner cities—there are disturbing echoes of the old racially dual systems of education that the Supreme Court addressed in *Brown v. Board of Education*, and of the two-tiered system of advanced versus basic education that the 1994 Title I reforms were designed to eliminate.

The Administration's rationalization for its passivity is that education is primarily a state and local function and that the appropriate federal role is to provide financial and technical assistance. It is true that much of the impetus for education reform has come from the states and from local education leaders. But it is equally true that without the active participation of the national government the benefits of reform will never reach the children who are worst off in this society. In resurrecting the old rhetoric of "states' rights" and "local control," the Clinton Administration ignores the crimes against African Americans that were committed in the name of states' rights and the constitutional role of the national government as guarantor of equal protection that emerged from the Civil War. In pleading federal powerlessness, the leaders of the U.S. Department of Education ignore the courageous role their predecessors played in using the civil rights laws to help end school segregation, in ensuring that funds designed to provide opportunities for poor children were used for their intended purpose and, later, in gaining access to educational opportunities for female and disabled students. Most of all, the Administration closes its eyes to continued inequities and barriers that states foster or tolerate, which are devastating to the educational opportunities of poor children.

The political rationale for the Administration's retreat was the election of a Republican Congress soon after the enactment of the Title I reforms in 1994. In the Administration's view, for it to insist that states carry out the obligations that Congress placed on it in 1994 would be to invite the current Congress to repeal the law. The fears of the Administration are not without foundation. Some Republican legislators are proposing that federal grants to educa-

tion be in the form of block grants that would diminish the federal role further, and others are seeking to carve out a major portion of aid for vouchers fostering private education.

But these ideas have not yet gathered broad acceptance, and it is far from clear that, for those who are opposed to them, the most effective strategy is to water down competing initiatives that promise educational improvement. Moreover, the central elements of standards-based reform are not "Democratic vs. Republican" or "liberal vs. conservative" ideas. High standards for all children is a goal that is generally embraced, and holding schools and school systems accountable for producing academic progress is a strategy espoused by conservative business leaders as well as liberal academicians. It may well be that an Administration prepared to make its case for reform and for the limited but critically important role of the national government would gather broader support than it apparently expects. Few people anticipated in advance the coalescence of views that led to passage and effective enforcement of equal educational opportunity laws and policies in the 1960s.

It would be unwise to overestimate the likely impact of standards-based reform on public education. The history of public education is littered with reforms offered as panaceas that failed to achieve their promise. But there are also strong reasons not to abandon in midstream an initiative that gives evidence of succeeding. No alternative to Title I reform has surfaced that holds out more hope of revitalizing the public schools that continue to serve the largest numbers of American children. No other set of proposals is truer to the unique American vision of common schools where all children are offered the means to achieve to their full potential.

The debate over the reauthorization of Title I and competing proposals will have an important and potentially decisive impact on the future course of American public education. The Citizens' Commission offers this report and recommendations in the hope that it will add information and perspective to the debate. This is a time for those who believe in what all children can achieve to speak for their futures.

Chapter X

Findings and Recommendations

Findings

The Citizens' Commission makes the following findings:

1. The Most Urgent Need in Education

The most urgent need in American education today is to remove the barriers to opportunity that now face poor children, particularly children of color, children with disabilities, and children with limited proficiency in English. The greatest obstacles are those facing children who live in concentrated poverty, a condition that disproportionately affects black, Latino, and other minority children. Children who attend high-poverty schools are often taught by underqualified teachers and generally have less access than others to needed resources and services such as preschool, early reading programs, counseling, smaller class sizes, and professional development for their teachers. In addition, the standards and expectations set for students in high-poverty schools, as well as for those assigned to lower tracks of other schools, are lower than those set for other students.

As a result of these barriers, many poor children, particularly those attending school in conditions of concentrated poverty, are performing at low levels and are not reaching their academic potential.

2. The Federal Role in Education

While the federal role in education is limited, the national government has a vital role in assuring equality of educational opportunity. The Equal Protection Clause of the Fourteenth Amendment is a mandate to federal departments and agencies to redress discrimination against children. There is also a national interest, founded in part on the General Welfare and Domestic Tranquility sections of the Constitution, in strengthening public education so that it can contribute to a productive and unified nation.

The national interest in education has been manifested for the past three decades primarily through civil rights laws and through Title I of the Elementary and Secondary Education Act, an $8 billion program that now serves nearly 10.5 million students in some 50,000 schools. Although the federal share of educational expenditures is small (less than 7%), this aid has helped to narrow the gap in education revenue that exists between high- and low-income areas because of inequities in state school financing systems.

3. The Impact of the Old Title I

During the 1970s and 1980s, black and Latino students made encouraging educational progress, with gains that closed almost half the gap between their levels of achievement and those of white students. There is evidence that the Title I program, along with school desegregation, Head Start, and other initiatives, contributed to these gains.

Nevertheless, the academic progress of poor children has been limited. Evidence drawn from schools operating under the old law showed that the law was not fully effective because: (a) it was designed to teach only basic, not advanced, skills; (b) it was

based on and ratified low expectations of poor and minority youngsters; and (c) it isolated these youngsters from the mainstream by pulling them out of the classroom for remediation.

4. Key Elements of the New Title I Reforms

To deal with the deficiencies identified, Congress completely overhauled the law in the Improving America's Schools Act of 1994. The new law was based on a finding that all children could master challenging material and higher level skills. It called for the setting of high standards, for the development of new forms of assessment to determine whether the standards were being met, for holding schools and school systems accountable for educational progress, and for using Title I resources to build the capacity of schools and school systems to meet their responsibilities.

(a) To address the problem of low expectations, the law called on states to adopt content standards articulating what children should know and be able to do and performance standards describing levels of proficiency that students reached in meeting the standards. These standards were to be set in at least reading/language arts and mathematics, and extended to Title I-eligible children in other subject matter areas if the state voluntarily adopted standards in additional areas.

(b) To address the problem of tests that examine students in only a few subjects, that assess only basic skills, and that compare test-takers only to each other rather than measuring their progress in learning what they should know, the new Title I called for new forms of assessment. The new assessments, to be in effect by 2000-01, must be:

- criterion-referenced and aligned with content and performance standards;
- statewide in application;
- inclusive of all students and providing accommodations for disabled and limited English proficient students; and
- disaggregated, so that results are reported by economic status, race, ethnicity, gender, English proficiency status, disability, and migrant status.

(c) To deal with problems stemming from a lack of responsibility for achieving results by state and local educational authorities, the statute called for the development by states of a comprehensive system of accountability. During the first five years, when standards and assessments are still being developed, states are required to develop procedures to identify schools and school districts in need of improvement.

When the accountability system is complete, it must include provisions for:

- adequate yearly progress, calling for continuous and substantial annual improvement in each district and school, particularly in the performance of disadvantaged and limited English proficient students in meeting proficient and advanced levels;
- public reporting, parent involvement, and public engagement on the issue of how to improve schools;
- identification of schools in need of improvement;
- corrective action to deal with school districts and schools that fail to make progress. Such action may include the withholding of funds, reconstituting schools and school districts, establishing charter schools, or allowing students to transfer out of failing schools to other schools or school districts.

(d) To help ensure that Title I funds are used in ways that advance the goal of high performance, the statute placed great emphasis on capacity-building, particularly in the professional development of teachers. While Congress did not want to dictate inputs in a law focused on accountability for results, the statute did call upon states to articulate how they would help districts and schools achieve the capacity to carry out their obligations and did require specific sums to be set aside for professional development in schools that were failing to meet their performance goals.

5. The Positive Results of Standards-Based Reform

The new Title I reforms are sound and workable. While the reforms called for by the 1994 amendments are still in midstream, evidence of their impact is accumulating in states that had similar standards-based reform in effect prior to 1994 and in places that have acted rapidly to implement the 1994 reforms.

In several states, notably Kentucky, Maryland, and Texas, major elements of reform have been put into place on a statewide basis.

A number of urban school districts have also launched reforms. For example, in Philadelphia, a rigorous reform program incorporating many Title I features has resulted in citywide gains in student achievement in a system where the great majority of students are poor. In San Antonio, the number of low-performing schools has declined from 40 to 6 over a five-year period. San Antonio is part of the Texas reform effort that has produced gains in many school systems. In Memphis, schools that have been redesigned along lines contemplated by Title I have produced substantial gains in achievement and the proportion of students taking college preparatory courses in math has increased from 41% to 66% over a four-year period. In these and other places, Title I dollars are helping to carry out well-conceived reforms.

The new Title I has not imposed onerous or unduly burdensome requirements on state or local fund recipients. Unlike the old law which called for a detailed accounting of expenditures, the new Title I discards detailed regulation in favor of an emphasis on accountability for results. The Citizens' Commission's review of state plans and of waiver requests provides supportive evidence for this finding, demonstrating that neither states nor districts have seen a need to approach the U.S. Department of Education in any significant numbers with requests for waivers of their duty to comply with the law.

6. Factors Retarding Progress

There is wide variance in the degree to which states have complied with the requirements of the new Title I. From our review of state plans and other pertinent material, the Citizens' Commission believes that a number of states have embraced the principles that all students should be expected to meet high standards and that those who operate public schools should be held accountable for achieving this goal. Other states embrace these principles in general but shrink from applying them to benefit economically disadvantaged students. Still other states have yet to adopt standards-based reform.

Failures by the U.S. Department of Education to take actions needed to implement and enforce the new Title I have retarded educational progress. The Clinton Administration certainly deserves credit for its steadfast support for public schools and for directing public attention to needs for educational improvement. With respect to Title I, the U.S. Department of Education has taken some positive action to further the specific purposes of the new law, providing general information and guidance about its aims, prodding states to upgrade their procedures for identifying schools in need of improvement, and recommending to Congress greater targeting of funds to poor areas.

But the Department has shrunk from furnishing clear messages to state and local education agencies on any issue that might prove controversial. As a result, many state and local education officials have received the impression that the new Title I is largely a deregulation law that will free them from bothersome federal conditions and have failed to understand that the tradeoff in the law is higher standards and accountability for results.

Most significantly, the Department has either failed to implement or has misinterpreted key provisions of the law that are designed to equalize learning opportunities between poor and non-poor children:

- Contrary to the law, the Department has limited the requirement of standards and assessments for Title I purposes to two subjects—reading and

mathematics—even when states have standards and assessments in other subjects.

- Contrary to the law, which requires states to adopt uniform standards, the Department has permitted states to accept differing local standards, without any effective means for assuring that all children will be called upon to meet high standards. Similarly, the Department has permitted states to use differing local assessments, again without any effective assurances of comparability.

- Ignoring the law, the Department has failed to insist that states reveal how they will assist local districts and schools in achieving the capacity to help students meet high standards. As a result, few states have made a substantial commitment to helping low-income districts acquire the resources to improve teaching, increase learning time, or meet other requirements of the law.

Cumulatively, these defaults and misinterpretations of the law by the Department have served to undermine a central objective of the new Title I: to eliminate the dual system that prevails in American education and that consigns poor children, children of color, and children with special needs to schools and programs with lower expectations, lower standards, fewer resources, and fewer opportunities than those enjoyed by the great majority of advantaged children.

Progress has been further retarded by the following failures of the Department:

- the failure to adopt in a timely way criteria for determining whether states have demonstrated that their content standards meet the requirements of the law;

- the failure to insist on timely adoption by states of performance standards for gauging proficiency and the acceptance of plans lacking an approved process for developing performance standards, with the result that as of the summer of 1998, 31 states and Puerto Rico had neither content nor performance standards or a process for developing them;

- the failure to explicate the statutory requirement that children be assessed in the language most likely to yield accurate information about their knowledge and skills;

- the failure to require states to measure separately the annual yearly progress of poor children and children with limited English proficiency so that the requirements of the law cannot be met solely by the gains of more advantaged children;

- the failure to insist on processes for assuring that children with disabilities will receive accommodations and will not be excluded from assessment except in rare circumstances;

- the failure to make clear to states and local education agencies that Title I assessments are not to be used for high-stakes purposes; and

- the failure to place sufficient emphasis on the importance of improving teaching through thoughtful programs of professional development.

In criticizing the Department, the Citizens' Commission does not suggest in any way that state and local officials have done their part to effectuate the purposes of the law. Indeed, the Citizens' Commission's review of state plans suggests that for all their rhetoric about education reform, many states have failed to heed the call of the new law to ensure that poor and minority children reap the benefits of standards-based reform. Moreover, after gladly accepting the changes in the law devolving significant responsibility from the federal and state government with respect to ensuring improved outcomes, the states' behavior suggests many may not be up to the hard work such responsibility entails.

Nor should Congress's role in holding back progress be underemphasized. At a time when many in Congress are promoting the devolution of federal power and responsibility to state officials, the failure

to appropriate sufficient funds to assist states in handling their growing public education responsibilities is particularly troubling.

7. Prospects for the Future

Despite the multiple failures of the Department of Education in implementing the new Title I, there is every reason to believe that the program can be successful in the future. Since the process of reform contemplated is a long-term one, the five-year authorization period is expiring before states have completed and implemented their reforms. But the experience of several states in raising standards, in adopting new learning strategies, in fashioning more useful assessment tools, and in creating practical accountability systems has already yielded positive results in the improved achievement of disadvantaged youngsters. Prospects for further gains will be enhanced by modest improvements in the statute and a commitment by the Clinton Administration to implement the law, including a willingness to enforce its provisions where violations occur.

Recommendations

The Citizens' Commission offers the following recommendations:

1. ***Congress should ratify the principles of standards-based reform contained in the 1994 amendments to Title I of the Elementary and Secondary Education Act by reauthorizing the Act for at least five more years.*** The central elements of that law—setting high standards and expectations for all children, fashioning new tools to assess how well children are being taught, and holding schools and school systems accountable—are all critically important to the educational advancement of poor children. The reform process set in motion by the Improving America's Schools Act of 1994 was not intended to be completed until the turn of the new century; therefore, reauthorization is needed to allow sufficient time for the reforms to be completed. Only if there were strong indications that the approach taken in 1994 was failing would termination and a search for alternatives be warranted. To the contrary, where reforms are being seriously undertaken, there is strong evidence that they are succeeding.

2. ***Congress should take additional steps to improve the capacity of schools and school districts in areas of concentrated poverty to meet the challenge of helping all their students reach high standards. In particular, Congress should make efforts to:***

- ***Attract the most able people to teach in high-poverty areas.*** Congress should enact a program to provide college loan forgiveness to able teachers who are certified and who commit to teaching for five years in schools in which at least 75% percent of the children enrolled are from low-income families. Congress should also appropriate funds to permit bonuses of $2,500 per year to be awarded to teachers with certification from the National Board for Professional Teaching Standards who commit to teaching for five years in such low-income schools. The federal government should also encourage corporate and state education leaders to facilitate mid-career transfers of business people who have an interest in teaching (particularly in science and technology) to teach in low-income schools.

- ***Improve the skills of the teachers through enhanced opportunities for professional development.*** While Congress sought in the 1994 amendments not to be prescriptive as long as results were obtained, there is much evidence that providing opportunities to teachers for professional development, particularly in learning strategies and teaching techniques that have proved effective, is a very sound investment. Accordingly, all schools should be required to devote at least 10% (schools identified as needing improvement should be required to spend a larger proportion) of their budget to professional development.

- ***Direct more resources to schools with high concentrations of poverty.*** In 1994, Congress, recognizing the barriers posed by concentrated poverty, made provision in the Title I allocation formula for distributing some funds by weighting for such concentrations. But this was an alternative formula that could be triggered only in limited circumstances, and it has never gone into effect. The evidence from the *Prospects* report and other sources reinforces the devastating educational effects of concentrated poverty. This time, Congress should assure that a substantial part of the total appropriation is allocated through a formula weighted for concentrated poverty.

3. ***The President and the Secretary of Education should announce the resolve of the Administration to implement and enforce Title I to secure its primary purpose: equalizing the learning opportunities available to poor and non-poor children. To that end, they should direct federal officials to take the following steps:***

- ***Ensure that states hold all children to the same high standards and use the same assessment tools to measure their progress.*** The dual standards and assessments that the U.S. Department of Education has sanctioned do the same kind of harm to poor and minority children that the racially dual school systems prohibited by *Brown v. Board of Education* have done in the past. These dual standards and assessments are not sanctioned by law and should be terminated immediately.

- ***Ensure that states and school districts make a broad and challenging curriculum available to all children.*** Ensuring that children in the poorest schools and districts have access to the same courses and materials that are available to those in the wealthiest areas is vital if all children are to have the opportunity to reach proficient and advanced levels. This also means that the U.S. Department of Education must hold state and local officials accountable for securing progress for poor children in all subject areas in which the state has standards, not simply in reading and mathematics.

- ***Insist that states carry out their statutory mandate to set forth a program for assisting local districts and schools in achieving the capacity to help students meet high standards.*** It is no secret that some states have school financing systems so inequitable that property-poor districts lack the capacity to attract and retain significant numbers of qualified teachers, to provide up-to-date texts and materials, to maintain small class sizes, and to provide other important educational services. While Title I does not rectify this problem, it does seek to provide at least a partial solution. The U. S. Department of Education should no longer ignore this requirement of the law.

- ***Insist that children with limited proficiency in English and children with disabilities be included in assessments and be given needed accommodations.*** Needed accommodations include observing the statutory requirement that children be tested in the language most likely to reveal accurate information about what they know and can do. In practice, children who are exempted from participating in assessments often are not taught because school officials are not held responsible for their progress.

- ***Ensure that states provide meaningful remedies for children who are trapped in failing schools or school systems.*** The law's requirement that states ensure that corrective action will be taken against schools and school districts failing to make adequate progress will soon come into effect. While Title I does not mandate the particular actions that must be taken, it also does not contemplate that children will be left in failing schools. At a minimum, the U.S. Department of Education must insist that steps be taken to ensure that failing schools be reconstituted in a way that promises real progress, and that children

have the option of transferring to schools or districts that offer effective education.

4. ***Governors and state and local education leaders should heed the mandate of Title I and, in many cases, their own state laws and policies, to ensure that poor and minority children reap the benefits of standards-based reform.*** State leaders should take bold action to close the gap between rich and poor districts and to improve learning opportunities for poor and minority students. State and local educators should ensure that standards are high for all children, that qualified teachers are available to the neediest students, and that accountability measures are implemented that afford all children access to successful schools.

Appendix

Selected Provisions of the Elementary and Secondary Education Act (ESEA)[1]

Title I of the ESEA § 1001, 20 U.S.C.A. § 6301 (Supp. 1998) Declaration of Policy and Statement of Purpose.

(a) Statement of policy.

(1) In general. The Congress declares it to be the policy of the United States that a high quality education for all individuals and a fair and equal opportunity to obtain that education are a societal good, are a moral imperative, and improve the life of every individual, because the quality of our individual lives ultimately depends on the quality of the lives of others. . . .

(d) Statement of purpose. The purpose of this subchapter is to enable schools to provide opportunities for children served to acquire the knowledge and skills contained in the challenging State content standards and to meet the challenging State performance standards developed for all children. This purpose shall be accomplished by—

(1) ensuring high standards for all children and aligning the efforts of States, local educational agencies, and schools to help children served under this subchapter to reach such standards;

(2) providing children an enriched and accelerated educational program, including, when appropriate, the use of the arts, through schoolwide programs or through additional services that increase the amount and quality of instructional time so that children served under this subchapter receive at least the classroom instruction that other children receive;

(3) promoting schoolwide reform and ensuring access of children (from the earliest grades) to effective instructional strategies and challenging academic content that includes intensive complex thinking and problem-solving experiences;

(4) significantly upgrading the quality of instruction by providing staff in participating schools with substantial opportunities for professional development;

(5) coordinating services under all parts of this subchapter with each other, with other educational services, and, to the extent feasible, with health and social service programs funded from other sources;

(6) affording parents meaningful opportunities to participate in the education of their children at home and at school;

(7) distributing resources, in amounts sufficient to make a difference, to areas and schools where needs are greatest;

(8) improving accountability, as well as teaching and learning, by using State assessment systems designed to measure how well children served under this subchapter are achieving challenging State student performance standards expected of all children; and

(9) providing greater decisionmaking authority and flexibility to schools and teachers in exchange for greater responsibility for student performance.

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[1] For the reader's convenience, the Citizens' Commission has excerpted several provisions of the Elementary and Secondary Education Act referenced in this report. This is not the complete text of that statute. This Appendix, for example, does not contain critical provisions on parent involvement or on state and local responsibility in implementing Title I. For the complete text, interested persons should directly consult statutory materials such as the Improving Americs's Schools Act, Public Law No. 103-382, 108 Stat. 3518 (Oct. 20, 1994).

Title I of the ESEA § 1111, 20 U.S.C.A. § 6311 (Supp. 1998)
State Plans.

(a) Plans required.

(1) In general. Any State desiring to receive a grant under this part shall submit to the Secretary a plan, developed in consultation with local educational agencies, teachers, pupil services personnel, administrators, other staff, and parents, that satisfies the requirements of this section and that is coordinated with other programs under this Act, the Goals 2000: Educate America Act, and other Acts, as appropriate, consistent with section 14306.

(2) Consolidation plan. A State plan submitted under paragraph (1) may be submitted as part of a consolidation plan under section 14302.

(b) Standards and assessments.

(1) Challenging standards.

(A) Each State plan shall demonstrate that the State has developed or adopted challenging content standards and challenging student performance standards that will be used by the State, its local educational agencies, and its schools to carry out this part, except that a State shall not be required to submit such standards to the Secretary.

(B) If a State has State content standards or State student performance standards developed under title III of the Goals 2000: Educate America Act and an aligned set of assessments for all students developed under such title, or, if not developed under such title, adopted under another process, the State shall use such standards and assessments, modified, if necessary, to conform with the requirements of subparagraphs (A) and (D) of this paragraph, and paragraphs (2) and (3).

(C) If a State has not adopted State content standards and State student performance standards for all students, the State plan shall include a strategy and schedule for developing State content standards and State student performance standards for elementary and secondary school children served under this part in subjects as determined by the State, but including at least mathematics and reading or language arts by the end of the one-year period described in paragraph (6), which standards shall include the same knowledge, skills, and levels of performance expected of all children.

(D) Standards under this paragraph shall include—

(i) challenging content standards in academic subjects that—

(I) specify what children are expected to know and be able to do;

(II) contain coherent and rigorous content; and

(III) encourage the teaching of advanced skills;

(ii) challenging student performance standards that—

(I) are aligned with the State's content standards;

(II) describe two levels of high performance, proficient and advanced, that determine how well children are mastering the material in the State content standards; and

(III) describe a third level of performance, partially proficient, to provide complete information about the progress of the lower performing children toward achieving to the proficient and advanced levels of performance.

(E) For the subjects in which students will be served under this part, but for which a State is not required by subparagraphs (A), (B), and (C) to develop, and has not otherwise developed such standards, the State plan shall describe a strategy for ensuring that such students are taught the same knowledge and skills and held to the same expectations as are all children.

(2) Yearly progress.

(A) Each State plan shall demonstrate, based on assessments described under paragraph (3), what constitutes adequate yearly progress of—

(i) any school served under this part toward enabling children to meet the State's student performance standards; and

(ii) any local educational agency that received funds under this part toward enabling children in schools receiving assistance under this part to meet the State's student performance standards.

(B) Adequate yearly progress shall be defined in a manner—

(i) that is consistent with guidelines established by the Secretary that result in continuous and substantial yearly improvement of each local educational agency and school sufficient to achieve the goal of all children served under this part meeting the State's proficient and advanced levels of performance, particularly economically disadvantaged and limited English proficient children; and

(ii) that links progress primarily to performance on the assessments carried out under this section while permitting progress to be established in part through the use of other measures.

(3) Assessments. Each State plan shall demonstrate that the State has developed or adopted a set of high-quality, yearly student assessments, including assessments in at least mathematics and reading or language arts, that will be used as the primary means of determining the yearly performance of each local educational agency and school served under this part in enabling all children under this part to meet the State's student performance standards. Such assessments shall—

(A) be the same assessments used to measure the performance of all children, if the State measures the performance of all children;

(B) be aligned with the State's challenging content and student performance standards and provide coherent information about student attainment of such standards;

(C) be used for purposes for which such assessments are valid and reliable, and be consistent with relevant, nationally recognized professional and technical standards for such assessments;

(D) measure the proficiency of students in the academic subjects in which a State has adopted challenging content and student performance standards and be administered at some time during—

(i) grades 3 through 5;

(ii) grades 6 through 9; and

(iii) grades 10 through 12;

(E) involve multiple up-to-date measures of student performance, including measures that assess higher order thinking skills and understanding;

(F) provide for—

(i) the participation in such assessments of all students;

(ii) the reasonable adaptations and accommodations for students with diverse learning needs, necessary to measure the achievement of such students relative to State content standards; and

(iii) the inclusion of limited English proficient students who shall be assessed, to the extent practicable, in the language and form most likely to yield accurate and reliable information on what such students know and can do, to determine such students' mastery of skills in subjects other than English;

(G) include students who have attended schools in a local educational agency for a full academic year but have not attended a single school for a full academic year, however the performance of students who have attended more than one school in the local educational agency in any academic year shall be used only in determining the progress of the local educational agency;

(H) provide individual student interpretive and descriptive reports, which shall include scores, or other information on the attainment of student performance standards; and

(I) enable results to be disaggregated within each State, local educational agency, and school by gender, by each major racial and ethnic group, by English proficiency status, by migrant status, by students with disabilities as compared to nondisabled students, and by economically disadvantaged students as compared to students who are not economically disadvantaged.

(4) Special rule. Assessment measures that do not meet the requirements of paragraph (3)(C) may be included as one of the multiple measures, if a State includes in the State plan information regarding the State's efforts to validate such measures.

(5) Language assessments. Each State plan shall identify the languages other than English that are present in the participating student population and indicate the languages for which yearly student assessments are not available and are needed.

The State shall make every effort to develop such assessments and may request assistance from the Secretary if linguistically accessible assessment measures are needed. Upon request, the Secretary shall assist with the identification of appropriate assessment measures in the needed languages through the Office of Bilingual Education and Minority Languages Affairs.

(6) Standards and assessment development.

(A) A State that does not have challenging State content standards and challenging State student performance standards, in at least mathematics and reading or language arts, shall develop such standards within one year of receiving funds under this part after the first fiscal year for which such State receives such funds after October 20, 1994.

(B) A State that does not have assessments that meet the requirements of paragraph (3) in at least mathematics and reading or language arts shall develop and test such assessments within four years (one year of which shall be used for field testing such assessment), of receiving funds under this part after the first fiscal year for which such State receives such funds after October 20, 1994, and shall develop benchmarks of progress toward the development of such assessment that meet the requirements of paragraph (3), including periodic updates.

(C) The Secretary may extend for one additional year the time for testing new assessments under subparagraph (B) upon the request of the State and the submission of a strategy to correct problems identified in the field testing of such new assessments.

(D) If, after the one-year period described in subparagraph (A), a State does not have challenging State content and challenging student performance standards in at least mathematics and reading or language arts, a State shall adopt a set of standards in these subjects such as the standards and assessments contained in other State plans the Secretary has approved.

(E) If, after the four-year period described in subparagraph (B), a State does not have assessments, in at least mathematics and reading or language arts, that meet the requirements of paragraph (3), and is denied an extension under subparagraph (C), a State shall adopt an assessment that meets the requirements of paragraph (3) such as one contained in other State plans the Secretary has approved.

(7) Transitional assessments.

(A) If a State does not have assessments that meet the requirements of paragraph (3) and proposes to develop such assessments under paragraph (6)(B), the State may propose to use a transitional set of yearly statewide assessments that will assess the performance of complex skills and challenging subject matter.

(B) For any year in which a State uses transitional assessments, the State shall devise a procedure for identifying local educational agencies under paragraphs (3) and (7) of section 1116(d), and schools under paragraphs (1) and (7) of section 1116(c), that rely on accurate information about the academic progress of each such local educational agency and school.

(8) Requirement. Each State plan shall describe—

(A) how the State educational agency will help each local educational agency and school affected by the State plan develop the capacity to comply with each of the requirements of sections 1112(c)(1)(D), 1114(b) and 1115(c) that is applicable to such agency or school; and

(B) such other factors the State deems appropriate to provide students an opportunity to achieve the knowledge and skills described in the challenging content standards adopted by the State.

(c) Other provisions to support teaching and learning. Each State plan shall contain assurances that—

(1) (A) the State educational agency will implement a system of school support teams under section 1117, including provision of necessary professional development for those teams;

(B) the State educational agency will work with other agencies, including educational service agencies or other local consortia, and institutions to provide technical assistance to local educational agencies and schools to carry out the State educational agency's responsibilities under this part, including technical assistance in providing professional development under section 1119 and technical assistance under section 1117; and

(C) (i) where educational service agencies exist, the State educational agency will consider providing professional

development and technical assistance through such agencies; and

(ii) where educational service agencies do not exist, the State educational agency will consider providing professional development and technical assistance through other cooperative agreements such as through a consortium of local educational agencies;

(2) the State educational agency will notify local educational agencies and the public of the standards and assessments developed under this section, and of the authority to operate schoolwide programs, and will fulfill the State educational agency's responsibilities regarding local educational agency improvement and school improvements under section 1116, including such corrective action as are necessary;

(3) the State educational agency will provide the least restrictive and burdensome regulations for local educational agencies and individual schools participating in a program assisted under this part;

(4) the State educational agency will encourage the use of funds from other Federal, State, and local sources for schoolwide reform in schoolwide programs under section 1114;

(5) the Committee of Practitioners established under section 1603(b) will be substantially involved in the development of this plan and will continue to be involved in monitoring the plan's implementation by the State; and

(6) the State will coordinate activities funded under this part with school-to-work, vocational education, cooperative education and mentoring programs, and apprenticeship programs involving business, labor, and industry, as appropriate.

(d) **Peer review and secretarial approval.**

(1) **In general.** The Secretary shall—

(A) establish a peer review process to assist in the review and recommendations for revision of State plans;

(B) appoint individuals to the peer review process who are representative of State educational agencies, local educational agencies, teachers, and parents;

(C) following the initial peer review, approve a State plan the Secretary determines meets the requirements of subsections (a), (b), and (c) of this section;

(D) if the Secretary determines that the State plan does not meet the requirements of subsection (a), (b), or (c) of this section, immediately notify the State of such determination and the reasons for such determination;

(E) not decline to approve a State's plan before—

(i) offering the State an opportunity to revise its plan;

(ii) providing technical assistance in order to assist the State to meet the requirements under subsections (a), (b), or (c) of this section; and

(iii) providing a hearing; and

(F) have the authority to disapprove a State plan for not meeting the requirements of this part, but shall not have the authority to require a State, as a condition of approval of the State plan, to include in, or delete from, such plan one or more specific elements of the State's content standards or to use specific assessment instruments or items.

(2) **Withholding.** The Secretary may withhold funds for State administration and activities under section 1117 until the Secretary determines that the State plan meets the requirements of this section.

(e) **Duration of plan.**

(1) **In general.** Each State plan shall—

(A) remain in effect for the duration of the State's participation under this part; and

(B) be periodically reviewed and revised by the State, as necessary, to reflect changes in the State's strategies and programs under this part.

(2) **Additional information.** If the State makes significant changes in its plan, such as the adoption of new State content standards and State student performance standards, new assessments, or a new definition of adequate progress, the State shall submit such information to the Secretary.

(f) **Limitation on conditions.** Nothing in this part shall be construed to authorize an officer or employee of the Federal Government to mandate, direct, or control a State, local educational agency, or school's specific instructional content or student performance

standards and assessments, curriculum, or program of instruction, as a condition of eligibility to receive funds under this part.

(g) Special rule. If the aggregate State expenditure by a State educational agency for the operation of elementary and secondary education programs in the State is less than such agency's aggregate Federal expenditures for the State operation of all Federal elementary and secondary education programs, then the State plan shall include assurances and specific provisions that such State will provide State expenditures for the operation of elementary and secondary education programs equal to or exceeding the level of Federal expenditures for such operation by October 1, 1998.

Title I of the ESEA § 1113, 20 U.S.C.A. § 6313 (Supp. 1998)
Eligible school attendance areas.

(a) Determination.

(1) In general. A local educational agency shall use funds received under this part only in eligible school attendance areas.

(2) Eligible school attendance areas. For the purposes of this part—

(A) the term "school attendance area" means, in relation to a particular school, the geographical area in which the children who are normally served by the school reside; and

(B) the term "eligible school attendance area" means a school attendance area in which the percentage of children from low-income families is at least as high as the percentage of children from low-income families in the local educational agency as a whole.

(3) Ranking order. If funds allocated in accordance with subsection (c) of this section are insufficient to serve all eligible school attendance areas, a local educational agency shall—

(A) annually rank, without regard to grade spans, such agency's eligible school attendance areas in which the concentration of children from low-income families exceeds 75 percent from highest to lowest according to the percentage of children from low-income families; and

(B) serve such eligible school attendance areas in rank order.

(4) Remaining funds. If funds remain after serving all eligible school attendance areas under paragraph (3), a local educational agency shall—

(A) annually rank such agency's remaining eligible school attendance areas from highest to lowest either by grade span or for the entire local educational agency according to the percentage of children from low-income families; and

(B) serve such eligible school attendance areas in rank order either within each grade-span grouping or within the local educational agency as a whole.

(5) Measures. The local educational agency shall use the same measure of poverty, which measure shall be the number of children ages 5 through 17 in poverty counted in the most recent census data approved by the Secretary, the number of children eligible for free and reduced priced lunches under the National School Lunch Act, the number of children in families receiving assistance under part A of title IV of the Social Security Act, or the number of children eligible to receive medical assistance under the Medicaid program, or a composite of such indicators, with respect to all school attendance areas in the local educational agency—

(A) to identify eligible school attendance areas;

(B) to determine the ranking in each area; and

(C) to determine allocations under subsection (c) of this section.

(6) Exception. This subsection shall not apply to a local educational agency with a total enrollment of less than 1,000 children.

(7) Waiver for desegregation plans. The Secretary may approve a local educational agency's written request for a waiver of the requirements of subsections (a) and (c) of this section, and permit such agency to treat as eligible, and serve, any school

that children attend with a State-ordered or court-ordered school desegregation plan or a plan that continues to be implemented in accordance with a State-ordered or court-ordered desegregation plan, if (A) the number of economically disadvantaged children enrolled in the school is at least 25 percent of the school's total enrollment; and (B) the Secretary determines on the basis of a written request from such agency and in accordance with such criteria as the Secretary establishes, that approval of that request would further the purposes of this part.

(b) Local educational agency discretion.

(1) In general. Notwithstanding subsection (a)(2) of this section, a local educational agency may—

(A) designate as eligible any school attendance area or school in which at least 35 percent of the children are from low-income families;

(B) use funds received under this part in a school that is not an eligible school attendance area, if the percentage of children from low-income families enrolled in the school is equal to or greater than the percentage of such children in a participating school attendance area of such agency; and

(C) elect not to serve an eligible school attendance area or eligible school that has a higher percentage of children from low-income families if—

(i) the school meets the comparability requirements of section 1120A(c);

(ii) the school is receiving supplemental funds from other State or local sources that are spent according to the requirements section 1114 or 1115; and

(iii) the funds expended from such other sources equal or exceed the amount that would be provided under this part.

(2) Special rule. Notwithstanding paragraph 1(c), the number of children attending private elementary and secondary schools who are to receive services, and the assistance such children are to receive under this part, shall be determined without regard to whether the public school attendance area in which such children reside is assisted under paragraph (1).

(c) Allocations.

(1) In general. A local educational agency shall allocate funds received under this part to eligible school attendance areas or eligible schools, identified under subsection (a) or (b) of this section, in rank order, on the basis of the total number of children from low-income families in each area or school.

(2) Special rule.

(A) Except as provided in subparagraph (B), the per pupil amount of funds allocated to each school attendance or school under paragraph (1) shall be at least 125 percent of the per pupil amount of funds a local educational agency received for that year under the poverty criteria described by the local educational agency in the plan submitted under section 1112, except that this paragraph shall not apply to a local educational agency that only serves schools in which the percentage of such children is 35 percent or greater.

(B) A local educational agency may reduce the amount of funds allocated under subparagraph (A) for a school attendance area or school by the amount of any supplemental State or local funds expended in that school attendance area or school for programs that meet the requirements of section 1114 or 1115.

(3) Reservation. A local educational agency shall reserve such funds as are necessary under this part to provide services comparable to those provided to children in schools funded under this part to serve—

(A) where appropriate, eligible homeless children who do not attend participating schools, including providing educationally related support services to children in shelters;

(B) children in local institutions for neglected or delinquent children; and

(C) where appropriate, neglected and delinquent children in community day school programs.

Title I of the ESEA § 1114, 20 U.S.C.A. § 6314 (Supp. 1998)
Schoolwide programs.

(a) Use of funds for schoolwide programs.

(1) In general. A local educational agency may use funds under this part, in combination with other Federal, State, and local funds, in order to upgrade the entire educational program in a school described in subparagraph (A) or (B) if, for the initial year of the schoolwide program, the school meets either of the following criteria:

(A) For the school year 1995-1996—

(i) the school serves an eligible school attendance area in which not less than 60 percent of the children are from low-income families; or

(ii) not less than 60 percent of the children enrolled in the school are from such families.

(B) For the school year 1996-1997 and subsequent years—

(i) the school serves an eligible school attendance area in which not less than 50 percent of the children are from low-income families; or

(ii) not less than 50 percent of the children enrolled in the school are from such families.

(2) State assurances.

(A) A local educational agency may start new schoolwide programs under this section only after the State educational agency provides written information to each local educational agency in the State that demonstrates that such State agency has established the statewide system of support and improvement required by subsections (c)(1) and (e) of section 1117.

(B) A school that desires to initiate a schoolwide program under this section prior to the establishment of the statewide system of support and improvement required in subsections (c)(1) and (e) of section 1117 shall demonstrate to the local educational agency that such school has received high quality technical assistance and support from other providers of assistance such as comprehensive technical assistance centers, regional laboratories, institutions of higher education, educational service agencies, or other local consortia.

(3) Identification.

(A) No school participating in a schoolwide program shall be required to identify particular children under this part as eligible to participate in a schoolwide program or to provide supplemental services to such children.

(B) A school participating in a schoolwide program shall use funds available to carry out this section only to supplement the amount of funds that would, in the absence of funds under this part, be made available from non-Federal sources for the school, including funds needed to provide services that are required by law for children with disabilities and children with limited English proficiency.

(4) Special rule.

(A) Except as provided in subsection (b) of this section, the Secretary may, through publication of a notice in the Federal Register, exempt schoolwide programs under this section from statutory or regulatory provisions of any other noncompetitive formula grant program administered by the Secretary, or any discretionary grant program administered by the Secretary (other than formula or discretionary programs under the Individuals with Disabilities Education Act) to support school-wide programs, if the intent and purposes of such other programs are met.

(B) A school that chooses to use funds from such other programs shall not be relieved of the requirements relating to health, safety, civil rights, gender equity, student and parental participation and involvement, services to private school children, maintenance of effort, comparability of services, uses of Federal funds to supplement, not supplant, non-Federal funds, or the distribution of funds to State or local educational agencies that apply to the receipt of funds from such programs.

(5) Professional development. Each school receiving funds under this part for any fiscal year shall devote sufficient resources to effectively carry out the activities described in subsection (b)(1)(D) of this section in accordance with section 1119 for such fiscal year, except that a school may enter into a consortium with another school to carry out such activities.

(b) Components of schoolwide program.

(1) In general. A schoolwide program shall include the following components:

(A) A comprehensive needs assessment of the entire school that is based on information on the performance of children in relation to the State content standards and the State student performance standards described in section 1111(b)(1).

(B) Schoolwide reform strategies that—

(i) provide opportunities for all children to meet the State's proficient and advanced levels of student performance described in section 1111(b)(1)(D);

(ii) are based on effective means of improving the achievement of children;

(iii) use effective instructional strategies, which may include the integration of vocational and academic learning (including applied learning and team teaching strategies), that—

(I) increase the amount and quality of learning time, such as providing an extended school year and before- and after-school and summer programs and opportunities, and help provide an enriched and accelerated curriculum; and

(II) include strategies for meeting the educational needs of historically underserved populations, including girls and women;

(iv) **(I)** address the needs of all children in the school, but particularly the needs of children who are members of the target population of any program that is included in the schoolwide program, which may include—

(aa) counseling, pupil services, and mentoring services;

(bb) college and career awareness and preparation, such as college and career guidance, comprehensive career development, occupational information, enhancement of employability skills and occupational skills, personal finance education, job placement services, and innovative teaching methods which may include applied learning and team teaching strategies;

(cc) services to prepare students for the transition from school to work, including the formation of partnerships between elementary, middle, and secondary schools and local businesses, and the integration of school-based and work-based learning; and

(dd) incorporation of gender-equitable methods and practices; and

(II) address how the school will determine if such needs have been met; and

(vii) are consistent with, and are designed to implement, the State and local improvement plans, if any, improved under title III of the Goals 2000: Educate America Act.

(C) Instruction by highly qualified professional staff.

(D) In accordance with section 1119 and subsection (a)(5) of this section, professional development for teachers and aides, and, where appropriate, pupil services personnel, parents, principals, and other staff to enable all children in the school to meet the State's student performance standards.

(E) Strategies to increase parental involvement, such as family literacy services.

(F) Plans for assisting preschool children in the transition from early childhood programs, such as Head Start, Even Start, or a State-run preschool program, to local elementary school programs.

(G) Measures to include teachers in the decisions regarding the use of assessments described in section 1112 in order to provide information on, and to improve, the performance of individual students and the overall instructional program.

(H) Activities to ensure that students who experience difficulty mastering any of the standards required by section 1111(b) during the course of the school year shall be provided with effective, timely additional assistance which shall include—

(i) measures to ensure that students' difficulties are identified on a timely basis and to provide sufficient information on which to base effective assistance;

(ii) to the extent the school determines feasible using funds under this part, periodic training for teachers in how to identify such difficulties and to provide assistance to individual students; and

(iii) for any student who has not met such standards, teacher-parent conferences, at which time the teacher and

parents shall discuss—

(I) what the school will do to help the student meet such standards;

(II) what the parents can do to help the student improve the student's performance; and

(III) additional assistance which may be available to the student at the school or elsewhere in the community.

(2) Plan

(A) Any eligible school that desires to operate a schoolwide program shall first develop (or amend a plan for such program that was in existence before October 20, 1994), in consultation with the local educational agency and its school support team or other technical assistance provider under subsections (c)(1) and (e) of section 1117, a comprehensive plan for reforming the total instructional program in the school that—

(i) incorporates the components described in paragraph (1);

(ii) describes how the school will use resources under this part and from other sources to implement those components;

(iii) includes a list of State and local educational agency programs and other Federal programs under subsection (a)(4) of this section that will be included in the schoolwide program;

(iv) describes how the school will provide individual student assessment results, including an interpretation of those results, to the parents of a child who participates in the assessment required by section 1111(b)(3);

(v) provides for the collection of data on the achievement and assessment results of students disaggregated by gender, major ethnic or racial groups, limited English proficiency status, migrant students, and by children with disabilities as compared to other students, and by economically disadvantaged students as compared to students who are not economically disadvantaged;

(vi) seeks to produce statistically sound results for each category for which assessment results are disaggregated through the use of oversampling or other means; and

(vii) provides for the public reporting of disaggregated data only when such reporting is statistically sound.

(B) Plans developed before a State has adopted standards and a set of assessments that meet the criteria in paragraphs (1) and (3) of section 1111(b) shall be based on an analysis of available data on the achievement of students in the school and effective instructional and school improvement practices.

(C) The comprehensive plan shall be—

(i) developed during a one-year period, unless—

(I) the local educational agency, after considering the recommendation of the technical assistance providers under subsections (c) and (e) of section 1117, determines that less time is needed to develop and implement the schoolwide program; or

(II) the school is operating a schoolwide program on the day preceding October 20, 1994, in which case such school may continue to operate such program, but shall develop a new plan during the first year of assistance under this chapter to reflect the provisions of this section;

(ii) developed with the involvement of the community to be served and individuals who will carry out such plan, including teachers, principals, other staff, and, where appropriate, pupil services personnel, and parents, and, if the plan relates to a secondary school, students from such school;

(iii) in effect for the duration of the school's participation under this part and reviewed and revised, as necessary, by the school;

(iv) available to the local educational agency, parents, and the public, and the information contained in such plan shall be translated, to the extent feasible, into any language that a significant percentage of the parents of the participating children in the school speak as their primary language; and

(v) where appropriate, developed in coordination with programs under the School-to-Work Opportunities Act of 1994, the Carl D. Perkins Vocational and Applied Technology Education Act, and the National and Community Service Act of 1990.

(c) Accountability. A schoolwide program under this section shall be subject to the school improvement provisions of section 1116.

Title I of the ESEA § 1115, 20 U.S.C.A. § 6315 (Supp. 1998)
Targeted assistance schools.

(a) In general. In all schools selected to receive funds under section 1113(c) that are ineligible for a schoolwide program under section 1114, or that choose not to operate such a schoolwide program, a local educational agency may use funds received under this part only for programs that provide services to eligible children under subsection (b) of this section identified as having the greatest need for special assistance.

(b) Eligible children.

(1) Eligible population.

(A) The eligible population for services under this part is—

(i) children not older than age 21 who are entitled to a free public education through grade 12; and

(ii) children who are not yet at a grade level where the local educational agency provides a free public education, yet are of an age at which such children can benefit from an organized instructional program provided in a school or other educational setting.

(B) From the population described in subparagraph (A), eligible children are children identified by the school as failing, or most at risk of failing, to meet the State's challenging student performance standards on the basis of multiple, educationally related, objective criteria established by the local educational agency and supplemented by the school, except that children from preschool through grade two shall be selected solely on the basis of such criteria as teacher judgment, interview with parents, and developmentally appropriate measures.

(2) Children included.

(A) (i) Children who are economically disadvantaged, children with disabilities, migrant children or limited English proficient children, are eligible for services under this part on the same basis as other children selected to receive services under this part.

(ii) Funds received under this part may not be used to provide services that are otherwise required by law to be made available to such children but may be used to coordinate or supplement such services.

(B) A child who, at any times in the two years preceding the year for which the determination is made, participated in a Head Start or Even Start program, is eligible for services under this part.

(C) (i) A child who, at any times in the two years preceding the year for which the determination is made, received services under the program for youth who are neglected, delinquent, or at risk of dropping out under part D (or its predecessor authority) may be eligible for services under this part.

(ii) A child in a local institution for neglected or delinquent children or attending a community day program for such children may be eligible for services under this part.

(D) A child who is homeless and attending any school in the local educational agency may be eligible for services under this part.

(c) Components of targeted assistance school program.

(1) In general. To assist targeted assistance schools and local educational agencies to meet their responsibility to provide for all their students served under this part the opportunity to meet the State's student performance standards in subjects as determined by the State, each targeted assistance program under this section shall—

(A) use such program's resources under this part to help participating children meet such State student performance standards expected for all children;

(B) be based on effective means for improving achievement of all children;

(C) ensure that planning for students served under this part is incorporated into existing school planning;

(D) use effective instructional strategies that—

(i) give primary consideration to providing extended learning time such as an extended school year, before- and after-school, and summer, programs and opportunities;

(ii) help provide an accelerated, high-quality curriculum, including applied learning; and

(iii) minimize removing children from the regular classroom during regular school hours for instruction provided under this part;

(E) coordinate with and support the regular education program, which may include—

(i) counseling, mentoring, and other pupil services;

(ii) college and career awareness and preparation, such as college and career guidance, comprehensive career development, occupational information, enhancement of employability skills and occupational skills, personal finance education, job placement services, and innovative teaching methods which may include applied learning and team teaching strategies;

(iii) services to prepare students for the transition from school to work, including the formation of partnerships between elementary, middle, and secondary schools and local businesses, and the integration of school-based and work-based learning; and

(iv) services to assist preschool children in the transition from early childhood to elementary school programs;

(F) provide instruction by highly qualified staff;

(G) in accordance with subsection (e)(3) of this section and section 1119, provide opportunities for professional development with resources provided under this part, and from other sources to the extent feasible, for administrators and for teachers and other school staff who work with participating children in programs under this section or in the regular education program; and

(H) provide strategies to increase parental involvement, such as family literary services.

(2) **Requirements.** Each school conducting a program under this section shall assist participating children selected in accordance with subsection (b) of this section to meet the State's proficient and advanced levels of performance by—

(A) the coordination of resources provided under this part with other resources to enable the children served to meet the State content standards and State student performance standards; and

(B) reviewing, on an ongoing basis, the progress of participating children and revising the targeted assistance program, if necessary, to provide additional assistance to enable such children to meet the State's challenging student performance standards, such as an extended school year, before- and after-school, and summer, programs and opportunities, training for teachers regarding how to identify students that require additional assistance, and training for teachers regarding how to implement student performance standards in the classroom.

(d) **Assignment of personnel.** To promote the integration of staff supported with funds under this part and children served under this part into the regular school program and overall school planning and improvement efforts, public school personnel who are paid with funds received under this part may—

(1) assume limited duties that are assigned to similar personnel who are not so paid, including duties beyond classroom instruction or that do not benefit participating children, so long as the amount of time spent on such duties is the same proportion of total work time as prevails with respect to similar personnel at the same school;

(2) participate in general professional development and school planning activities; and

(3) collaboratively teach with regular classroom teachers, if such collaborative teaching directly benefits participating children.

(e) **Special rules.**

(1) **Simultaneous service.** Nothing in this section shall be construed to prohibit a school from serving students served under this section simultaneously with students with similar educational needs, in the same educational settings where appropriate.

(2) **Comprehensive services.** If health, nutrition, and other social services are not otherwise available to eligible children in a targeted assistance school and such school, if appropriate, has engaged in a comprehensive needs assessment and established a collaborative partnership with local service providers, and if funds are not reasonably available from other public or private sources to provide services under this part, then a portion of the funds provided under this part may be used as a last resort to provide such services, including—

(A) the provision of basic medical equipment, such as eyeglasses and hearing aids;

(B) compensation of a coordinator; and

(C) professional development necessary to assist teachers, pupil services personnel, other staff, and parents in identifying and meeting the comprehensive needs of eligible children.

(3) Professional development. Each school receiving funds under this part for any fiscal year shall devote sufficient resources to effectively carry out the professional development activities described in subparagraph (G) of subsection (c)(1) of this section in accordance with section 1119, for such fiscal year, except that a school may enter into a consortium with another school to carry out such activities.

Title I of the ESEA § 1116, 20 U.S.C.A. § 6317 (Supp. 1998)
Assessment and local educational agency and school improvement.

. . . .

(d) State review and local educational agency improvement.

(1) In general. A State educational agency shall—

(A) annually review the progress of each local educational agency receiving funds under this part to determine whether schools receiving assistance under this part are making adequate progress as defined in section 1111(b)(2)(A)(ii) toward meeting the State's student performance standards; and

(B) publicize and disseminate to local educational agencies, teachers and other staff, parents, students, and the community the results of the State review, including statistically sound disaggregated results, as required by section 1111(b)(3)(I).

(2) Rewards. In the case of a local educational agency that for three consecutive years has met or exceeded the State's definition of adequate progress as defined in section 1111(b)(2)(A)(ii), the State may make institutional and individual rewards of the kinds described for individual schools in paragraph (2) of section 1117.

(3) Identification.

(A) A State educational agency shall identify for improvement any local educational agency that—

(i) for two consecutive years, is not making adequate progress as defined in section 1111(b)(2)(A)(ii) in schools served under this part toward meeting the State's student performance standards, except that schools served by the local educational agency that are operating targeted assistance programs may be reviewed on the progress of only those students served under this part; or

(ii) has failed to meet the criteria established by the State through such State's transitional procedure under section 1111(b)(7)(B) for two consecutive years.

(B) Before identifying a local educational agency for improvement under paragraph (1), the State educational agency shall provide the local educational agency with an opportunity to review the school-level data, including assessment data, on which such identification is based. If the local educational agency believes that such identification for improvement is in error due to statistical or other substantive reasons, such local educational agency may provide evidence to the State educational agency to support such belief.

(4) Local educational agency revisions.

(A) Each local educational agency identified under paragraph (3) shall, in consultation with schools, parents, and educational experts, revise its local educational agency plan under section 1112 in ways that have the greatest likelihood of improving the performance of schools served by the local educational agency under this part in meeting the State's student performance standards.

(B) Such revision shall include determining why the local educational agency's plan failed to bring about increased achievement.

(5) State educational agency responsibility.

(A) For each local educational agency identified under paragraph (3), the State educational agency shall—

(i) provide technical or other assistance, if requested, as authorized under section 1117, to better enable the local educational agency to—

(I) develop and implement the local educational agency's revised plan; and

(II) work with schools needing improvement; and

(ii) make available to the local educational agencies farthest from meeting the State's standards, if requested, assistance under section 1117.

(B) Technical or other assistance may be provided by the State educational agency directly, or by an institution of higher education, a private nonprofit organization, an educational service agency or other local consortium, a technical assistance center, or other entities with experience in assisting local educational agencies improve achievement, and may include—

(i) interagency collaborative agreements between the local educational agency and other public agencies to provide health, pupil services, and other social services needed to remove barriers to learning; and

(ii) waivers or modifications of requirements of State law or regulation (in States in which such waivers are permitted) that impede the ability of a local educational agency to educate students.

(6) Corrective action.

(A) Except as provided in subparagraph (C), after providing technical assistance pursuant to paragraph (5) and taking other remediation measures, the State educational agency may take corrective action at any time against a local educational agency that has been identified under paragraph (3), but, during the fourth year following identification under paragraph (3), shall take such action against any local educational agency that still fails to make adequate progress.

(B) (i) Corrective actions are those actions, consistent with State law, determined and made public and disseminated by the State educational agency, which may include —

(I) the withholding of funds;

(II) reconstitution of school district personnel;

(III) removal of particular schools from the jurisdiction of the local educational agency and establishment of alternative arrangements for public governance and supervision of such schools;

(IV) appointment by the State educational agency of a receiver or trustee to administer the affairs of the local educational agency in place of the superintendent and school board;

(V) the abolition or restructuring of the local educational agency;

(VI) the authorizing of students to transfer from a school operated by one local educational agency to a school operated by another local educational agency; and

(VII) a joint plan between the State and the local educational agency that addresses specific elements of student performance problems and that specifies State and local responsibilities under the plan.

(ii) Notwithstanding clause (i), corrective action taken pursuant to this part shall not include the actions described in subclauses (I), (II), and (III) of clause (i) until the State has developed assessments that meet the requirements of paragraph (3)(C) of section 1111(b).

(C) Prior to implementing any corrective action, the State educational agency shall provide due process and a hearing (if State law provides for such due process and a hearing) to any local educational agency identified under paragraph (3) and may refrain from such corrective action for one year after the four-year period described in subparagraph (A) to the extent that failure to make progress can be attributed to such extenuating circumstances as determined by the State educational agency.

(7) Special rule. Local educational agencies that for at least two of the three years following identification under paragraph (3) make adequate progress toward meeting the State's standards no longer need be identified for local educational agency improvement.

(e) Construction. Nothing in this section shall be construed to alter or otherwise affect the rights, remedies, and procedures afforded school or school district employees under Federal, State, or local laws (including applicable regulations or court orders) or under the terms of collective bargaining agreements, memoranda of understanding, or other agreements between such employees and their employers.

Title I of the ESEA § 1117, 20 U.S.C.A. § 6318 (Supp. 1998)
State assistance for school support and improvement.

(a) System for support.

(1) State support. Each State educational agency shall establish a statewide system of intensive and sustained support and improvement for schools receiving funds under this part, including schoolwide programs and schools in need of program improvement, in order to increase the opportunity for all students in such schools to meet the State's content standards and student performance standards.

(2) Meeting requirements. Funds reserved under section 1003 or appropriated under section 1002(f) shall be used to meet the requirements of this section. In addition to such funds a State educational agency may use State administrative funds reserved under section 1603 to meet such requirements.

(b) Regional centers. Such a statewide system shall work with and receive support and assistance from the comprehensive regional technical assistance centers under part A of subchapter XIII of this chapter and the educational regional laboratories under section 941(h).

(c) Provisions. The system shall include at a minimum, the following:

(1) School support teams.

(A) Each State educational agency, in consultation with local educational agencies and schools, shall establish a system of school support teams to provide information and assistance to schoolwide programs and to assist such programs in providing an opportunity to all students to meet the State's student performance standards.

(B) If funds are sufficient, school support teams shall provide information and assistance to—

(i) schools—

(I) in which the number of students in poverty is equal to or greater than 75 percent of the total number of students enrolled in such school; and

(II) identified as in need of improvement under section 1116(c)(1); and

(ii) other schools in need of improvement.

(C) Each such team shall be composed of persons, including teachers, pupil services personnel, representatives of organizations knowledgeable about successful schoolwide projects or comprehensive school reform (especially distinguished educators described in paragraph (3)), and other persons who are knowledgeable about research and practice on teaching and learning, particularly about strategies for improving the educational opportunities for low-achieving students (including alternative and applied learning), such as representatives of institutions of higher education, regional educational laboratories or research centers, and outside consultant groups.

(D) A school support team shall work cooperatively with each school and make recommendations as the school develops the school's schoolwide program plan or school improvement plan, review each plan, and make recommendations to the school and the local educational agency.

(E) During the operation of the schoolwide program or during the school improvement activities, a school support team shall—

(i) periodically review the progress of the school in enabling children in the school to meet the State's student

performance standards under this part;

(ii) identify problems in the design and operation of the instructional program; and

(iii) make recommendations for improvement to the school and the local educational agency.

(2) **Distinguished schools.**

(A) Each State shall designate as a distinguished school any school served under this part which, for three consecutive years, has exceeded the State's definition of adequate progress as defined in section 1111(b)(2)(A)(i), and, any school in which—

(i) virtually all students have met the State's advanced level of student performance; and

(ii) equity in participation and achievement of students by sex has been achieved or significantly improved.

(B) Schools designated under this paragraph may serve as models and provide support to other schools, especially schoolwide programs and schools in school improvement, to assist such schools in meeting the State's student performance standards.

(C) States shall use funds reserved under section 1003(a) and funds made available under 1002(f) to allow schools identified under this paragraph to carry out the activities described in subparagraph (B) and may use such funds to provide awards to such schools to further such school's education programs under this part, provide additional incentives for continued success, and reward individuals or groups in the school for exemplary performance.

(D) A local educational agency may also recognize the success of a distinguished school by providing additional institutional and individual rewards, such as greater decisionmaking authority at the school building level, increased access to resources or supplemental services such as summer programs that may be used to sustain or increase success, additional professional development opportunities, opportunities to participate in special projects, and individual financial bonuses.

(3) **Distinguished educators.**

(A) In order to provide assistance to schools and local educational agencies identified as needing improvement and schools participating in schoolwide programs, each State, in consultation with local educational agencies and using funds reserved under section 1003(a) and made available under section 1002(f), shall establish a corps of distinguished educators.

(B) When possible, distinguished educators shall be chosen from schools served under this part that have been especially successful in enabling children to meet or make outstanding progress toward meeting the State's student performance standards, such as the schools described in paragraph (2).

(C) Distinguished educators shall provide, as part of the statewide system, intensive and sustained assistance to the schools and local educational agencies farthest from meeting the State's student performance standards and to schoolwide programs as such programs develop and implement their plans, including participation in the school support teams described in paragraph (1).

(d) **Implementation.** In order to implement this section funds reserved under section 1003(a) and funds made available under section 1002(f) may be used by a State for release time for teachers and administrators, travel, training, and other related costs.

(e) **Alternatives.** The State may devise additional approaches to providing the assistance described in paragraphs (1) and (3) of subsection (c) of this section, such as providing assistance through institutions of higher education and educational service agencies or other local consortia, and the State may seek approval from the Secretary to use funds reserved under section 1003 and funds made available under section 1002(f) for such approaches as part of the State plan.

Title I of the ESEA § 1119, 20 U.S.C.A. § 6320 (Supp. 1998)
Professional development.

(a) Program requirements.

(1) In general. Each local educational agency receiving assistance under this part shall provide high-quality professional development that will improve the teaching of the academic subjects, consistent with the State content standards, in order to enable all children to meet the State's student performance standards.

(2) Program design. Such professional development activities shall be designed by principals, teachers, and other school staff in schools receiving assistance under this part.

(b) Professional development activities.

(1) Required activities. Such professional development activities shall—

(A) support instructional practices that are geared to challenging State content standards and create a school environment conducive to high achievement in the academic subjects;

(B) support local educational agency plans under section 1112 and school plans under section 1114;

(C) draw on resources available under this part, title III of the Goals 2000: Educate America Act, subchapter II of this chapter, and from other sources;

(D) where appropriate, as determined by the local educational agency, include strategies for developing curricula and teaching methods that integrate academic and vocational instruction (including applied learning and team teaching strategies); and

(E) include strategies for identifying and eliminating gender and racial bias in instructional materials, methods, and practices.

(2) Optional activities Such professional development activities may include—

(A) instruction in the use of assessments;

(B) instruction in ways that teachers, principals, pupil services personnel, and school administrators may work more effectively with parents;

(C) the forming of partnerships with institutions of higher education to establish school-based teacher training programs that provide prospective teachers and novice teachers with an opportunity to work under the guidance of experienced teachers and college faculty;

(D) instruction in the use of technology;

(E) the creation of career ladder programs for paraprofessionals (assisting teachers under this part) to obtain the education necessary for such paraprofessionals to become licensed and certified teachers;

(F) instruction in ways to teach special needs children;

(G) instruction in gender-equitable education methods, techniques, and practices;

(H) joint professional development activities involving programs under this part, Head Start, Even Start, or State-run preschool program personnel; and

(I) instruction in experiential-based teaching methods such as service-learning.

(c) Program participation. Each local educational agency receiving assistance under this part is encouraged to design professional development programs so that—

(1) all school staff in schools participating in a schoolwide program under section 1114 can participate in professional development activities; and

(2) all school staff in targeted assistance schools may participate in professional development activities if such participation will result in better addressing the needs of students served under this part.

(d) Parental participation. Parents may participate in professional development activities under this part if the school determines that parental participation is appropriate.

(e) Consortia. In carrying out such professional development programs, local educational agencies may provide services through

consortia arrangements with other local educational agencies, educational service agencies or other local consortia, institutions of higher education, or other public or private institutions or organizations.

(f) Effective teaching strategies. Knowledge of effective teaching strategies that is gained through professional development activities under this section may be shared with teachers who are not participating in targeted assistance programs under this part.

(g) Combinations of funds. Funds provided under this part that are used for professional development purposes may be combined with funds provided under subchapter II of this chapter, title III of the Goals 2000: Educate America Act, and other sources.

(h) State review.

(1) In general. The State educational agency shall review the local educational agency's plan under section 1112(b) to determine if such agency's professional development activities—

(A) are tied to challenging State student content and student performance standards;

(B) reflect research on teaching and learning where possible;

(C) are designed to have a positive impact on the teacher's performance in the classroom;

(D) contribute to continuous improvement in the classroom or throughout the school;

(E) include methods to teach children with special needs;

(F) are developed with the extensive participation of teachers; and

(G) include gender-equitable education methods, techniques, and practices.

(2) Technical assistance. If a local educational agency's plan for professional development does not include the activities described in paragraph (1), the State educational agency shall provide technical assistance to such local educational agencies to enable such agencies to make progress toward inclusion of such activities in the local educational agency's professional development activities.

(3) Special rule. No State educational agency shall require a school or a local educational agency to expend a specific amount of funds for professional development activities under this part, except that this paragraph shall not apply with respect to requirements under section 1116(d)(6). . . .

ESEA § 14401, 20 U.S.C.A. § 8881 (Supp. 1998)
Waivers of statutory and regulatory requirements.

(a) In general. Except as provided in subsection (c) of this section, the Secretary may waive any statutory or regulatory requirement of this chapter for a State educational agency, local educational agency, Indian tribe, or school through a local educational agency, that—

(1) receives funds under a program authorized by this chapter; and

(2) requests a waiver under subsection (b) of this section.

(b) Request for waiver.

(1) In general. A State educational agency, local educational agency, or Indian tribe which desires a waiver shall submit a waiver request to the Secretary that—

(A) identifies the Federal programs affected by such requested waiver;

(B) describes which Federal requirements are to be waived and how the waiving of such requirements will—

(i) increase the quality of instruction for students; or

(ii) improve the academic performance of students;

(C) if applicable, describes which similar State and local requirements will be waived and how the waiving of such requirements will assist the local educational agencies, Indian tribes or schools, as appropriate, to achieve the objectives described in clauses (i) and (ii) of subparagraph (B);

(D) describes specific, measurable educational improvement goals and expected outcomes for all affected students;

(E) describes the methods to be used to measure progress in meeting such goals and outcomes; and

(F) describes how schools will continue to provide assistance to the same populations served by programs for which waivers are requested.

(2) **Additional information.** Such requests—

(A) may provide for waivers of requirements applicable to State educational agencies, local educational agencies, Indian tribes, and schools; and

(B) shall be developed and submitted—

(i) (I) by local educational agencies (on behalf of such agencies and schools) to State educational agencies; and

(II) by State educational agencies (on behalf of, and based upon the requests of, local educational agencies) to the Secretary; or

(ii) by Indian tribes (on behalf of schools operated by such tribes) to the Secretary.

(3) **General requirements.**

(A) In the case of a waiver request submitted by a State educational agency acting in its own behalf, the State educational agency shall—

(i) provide all interested local educational agencies in the State with notice and a reasonable opportunity to comment on the request;

(ii) submit the comments to the Secretary; and

(iii) provide notice and information to the public regarding the waiver request in the manner that the applying agency customarily provides similar notices and information to the public.

(B) In the case of a waiver request submitted by a local educational agency that receives funds under this chapter—

(i) such request shall be reviewed by the State educational agency and be accompanied by the comments, if any, of such State educational agency; and

(ii) notice and information regarding the waiver request shall be provided to the public by the agency requesting the waiver in the manner that such agency customarily provides similar notices and information to the public.

(c) **Restrictions.** The Secretary shall not waive under this section any statutory or regulatory requirement relating to—

(1) the allocation or distribution of funds to States, local educational agencies, or other recipients of funds under this chapter;

(2) maintenance of effort;

(3) comparability of services

(4) use of Federal funds to supplement, not supplant, non-Federal funds;

(5) equitable participation of private school students and teachers;

(6) parental participation and involvement;

(7) applicable civil rights requirements;

(8) the requirements for a charter school under part C of subchapter X of this chapter; or

(9) the prohibitions regarding

(A) State aid in section 14502 [which provides that "A State shall not take into consideration payments under this chapter (other than under subchapter VIII) in determining the eligibility of any local educational agency in such State for State aid, or the amount of State aid, with respect to free public education of children."]; or

(B) use of funds for religious worship or instruction in section 14507 [which provides that "Nothing in this chapter shall be construed to authorize the making of any payment under this chapter for religious worship or instruction."].

(d) **Duration and extension of waiver.**

(1) **In general.** Except as provided in paragraph (2), the duration of a waiver approved by the Secretary under this section may be for a period not to exceed three years.

(2) **Extension.** The Secretary may extend the period described in paragraph (1) if the Secretary determines that—

(A) the waiver has been effective in enabling the State or affected recipients to carry out the activities for which the waiver was requested and the waiver has contributed to improved student performance; and

(B) such extension is in the public interest.

(e) **Reports.**

(1) **Local waiver.** A local educational agency that receives a waiver under this section shall at the end of the second year for which a waiver is received under this section, and each subsequent year, submit a report to the State educational agency that—

(A) describes the use of such waiver by such agency or by schools;

(B) describes how schools continued to provide assistance to the same populations served by the programs for which waivers are requested; and

(C) evaluates the progress of such agency and of schools in improving the quality of instruction or the academic performance of students.

(2) **State waiver.** A State educational agency that receives reports required under paragraph (1) shall annually submit a report to the Secretary that is based on such reports and contains such information as the secretary may require.

(3) **Indian tribe waiver.** An Indian tribe that receives a waiver under this section shall annually submit a report to the Secretary that—

(A) describes the uses of such waiver by schools operated by such tribe; and

(B) evaluates the progress of such schools in improving the quality of instruction or the academic performance of students.

(4) **Report to Congress.** Beginning in fiscal year 1997 and each subsequent year, the Secretary shall submit to the Committee on Education and Labor of the House of Representatives and the Committee on Labor and Human Resources of the Senate a report—

(A) summarizing the uses of waivers by State educational agencies, local educational agencies, Indian tribes, and schools; and

(B) describing whether such waivers—

(i) increased the quality of instruction to students; or

(ii) improved the academic performance of students.

(f) **Termination of waivers.** The Secretary shall terminate a waiver under this section if the Secretary determines that the performance of the State or other recipient affected by the waiver has been inadequate to justify a continuation of the waiver or if the waiver is no longer necessary to achieve its original purpose.

(g) **Publication.** A notice of the Secretary's decision to grant each waiver under subsection (a) of this section shall be published in the Federal Register and the Secretary shall provide for the dissemination of such notice to State educational agencies, interested parties, including educators, parents, students, advocacy and civil rights organizations, and the public.

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